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JANUARY-MARCH 1982

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior -- James G. Watt

Office of Hearings and Appeals -- James A. Limb, Director

Office of the Solicitor -- William H. Coldiron, Solicitor

INDEX-DIGEST

JANUARY-MARCH 1982

This index-digest covers all published and important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through March 31, 1982, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

Decisions and opinions cited as appearing in 89 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

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SYMBOLS

ANCAB - Alaska Native Claims Appeals Board
IA-T - Indian Appeals--Tort
IBCA - Interior Board of Contract Appeals
IBIA - Interior Board of Indian Appeals
IBLA - Interior Board of Land Appeals
IBSMA - Interior Board of Surface Mining Appeals
M - Solicitor's Opinion
OHA - Office of Hearings and Appeals
SEC - Office of the Secretary

ACCOUNTS

PAYMENTS

An American Express money order is not an acce
able form of remittance for payment of the filing f
accompanying an oil and gas lease offer under 43 CF
3112.2-2, which specifically requires that where
remittance is by money order it must be by either p
office or bank money order.

A bank personal money order is an acceptable f
of payment in satisfaction of the filing fee to acc
pany simultaneous oil and gas lease offers accordin
to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan.
1982)

ACT OF SEPTEMBER 19, 1914

The Act of Sept. 19, 1914 (38 Stat. 714), a st
tory withdrawal of certain lands from the operation
all mineral and nonmineral laws of the United State
pertaining to location, entry, or appropriation, fo
the reservation of such lands as a water supply res
for the use of Salt Lake City, was not repealed by
implication through enactment of the Mineral Leasin
Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

ACT OF NOVEMBER 9, 1921

A mining claim located on lands subject to a v
ongoing, and preexisting material site granted purs
to the Federal Highway Act of Nov. 9, 1921, 23 U.S.
§ 18 (1946), now the Federal Aid Highway Act, 23 U.
§ 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

ACT OF MAY 21, 1930

Lands under reservoir rights-of-way may be leas
for oil and gas only under authority of the Act of
May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such la
are not "available for leasing under the [Mineral
Leasing] Act," within the ambit of the 640-acre limi
tion set forth at 43 CFR 3110.1-3(a). However, a le
offer, which does not include all of the lands withi
reservoir right-of-way comprised of only about 110
acres, is properly rejected in the exercise of the
Secretary's discretionary authority, and must be
rejected as a matter of law when the offeror is not
person qualified under the 1930 Act to lease the lan
in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

ACT OF AUGUST 11, 1955

Lands covered by a preliminary permit of a pro-
spective licensee for a power project, which was iss
by the Federal Energy Regulatory Commission and is i
its initial term, are not open to mineral location.
mining claim located on such lands is void ab initio
unless the land has been restored to such entry in
accordance with sec. 24 of the Federal Power Act,
16 U.S.C. § 818 (1976).

Jason B. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

ADMINISTRATIVE AUTHORITY

GENERALLY

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

ADMINISTRATIVE PRACTICE

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

ADMINISTRATIVE PROCEDURE

GENERALLY

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

ADJUDICATION

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

ADMINISTRATIVE REVIEW

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Henry St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor H. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

DECISIONS

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

HEARINGS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record,

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

ALASKA

NATIVE ALLOTMENTS

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected without finality, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

In sec. 905(d) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsec. (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, *as amended*, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), *as amended*, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, *as amended*.

Wayne C. Williams (On Reconsideration), 61 IBLA 181 (Jan. 26, 1982)

Where the State Office rejects a Native allotment application because it was deficient in form and untimely filed and the applicant argues that he timely and properly filed the application, and where the factual record does not clearly support either view, the case will be remanded for a hearing.

Charlie B. Biederman, 61 IBLA 189 (Jan. 26, 1982)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to require an applicant for a Native allotment to *complete* 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the *commencement* of use and occupancy or the *filing* of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

Andrew Gordon McKinley, Annie Bennett (On Reconsideration), 61 IBLA 282 (Feb. 2, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(a)(5)(A), (B), and (C) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that paragraph (1) of this subsection and subsec. (d) shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, *as amended*, if on or before the 180th day following the effective date of this Act the State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. However, where the State's protest describes land which is clearly different from the land claimed by the Native applicant, the Board will instruct BLM to grant the allotment, provided all else is regular.

United States v. Mary S. Napouk, 61 IBLA 316 (Feb. 8, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Steven Bergman (On Reconsideration), 61 IBLA 399 (Feb. 22, 1982)

Heirs of Macauley Alakayak (On Reconsideration), 62 IBLA 90 (Feb. 25, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, *inter alia*, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

In sec. 905(a) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of the Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Heirs of Pete Olson, 63 IBLA 64 (Mar. 30, 1982)

Nina Harris, 63 IBLS 74 (Mar. 30, 1982)

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

GENERALLY

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906,

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

GENERALLY--Continued

and other applicable law, necessitating, *inter alia*, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

ADMINISTRATIVE PROCEDURE

Generally

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

Decision to Issue Conveyance

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Where in a decision to issue conveyance the Bureau of Land Management lists certain water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, there is no requirement in ANCSA or its implementing regulations that the BLM list those water bodies, if any, which were determined to be nonnavigable and the beds of which are to be conveyed to the grantee corporation(s) and charged against its entitlement.

The Bureau of Land Management is not required to include in a decision to issue conveyance a written statement of reasons for its navigability determinations, if any.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD

Appeals

Generally

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982)
89 I.D. 74

Decisions

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

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Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982)
89 I.D. 74

Dismissal

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board fails to timely respond to an order of the Board requiring that the appellant file notice as to whether it intends to pursue its appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 264 (Jan. 15, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain no issues to be resolved by the Board.

Clara Helgason, 6 ANCAB 267 (Jan. 15, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

An appeal will be dismissed when the decision appealed from is amended pursuant to Board order based upon a stipulation entered into by the parties and a timely appeal has not been taken from the published amended decision.

Kwik, Inc., 6 ANCAB 304 (Jan. 27, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Northway Natives, Inc., 6 ANCAB 338 (Jan. 29, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

State of Alaska, 7 ANCAB 1 (Mar. 8, 1982)

An appeal will be dismissed when the appellant fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Matanuska-Susitna Borough, 7 ANCAB 4 (Mar. 24, 1982)

Jurisdiction

The Board is without jurisdiction to adjudicate the validity of a Native allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

Remand

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing

The test for standing to appeal a decision under 43 CFR 4.902 requires, in part, that the appellant claim a property interest within the meaning of the regulation. To appeal a § 17(b)(1) public easement decision this portion of the standing requirement is satisfied when the appellant's property interest consists of a § 14(g) valid existing right to which the conveyance of lands under ANCSA is subject.

An appellant claiming standing to appeal a § 17(b)(1) public easement decision must not only claim to have a property interest, but in order to meet the standing test of 43 CFR 4.902, must further assert that the appealed decision affects that property interest by failing to provide the appellant and the public with access to public lands.

Ray DeVilbiss (Wolverine Grazers Ass'n), 6 ANCAB 290 (Jan. 27, 1982) 89 I.D. 9

The appropriate test of standing to appeal a decision to this Board is not whether a person is an aggrieved party, but whether a person claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed.

In response to arguments that the test of whether a person is aggrieved should be applied because it is consistent with judicial requirements for standing, the Board must find itself bound by its own regulations for standing, which require a claim of property interest.

The mere allegation of ownership and use of State and Federal lands as a member of the public does not constitute a claim of property interest in land as is required for standing under regulations in 43 CFR 4.902.

A fee simple ownership interest in a fishing lodge is clearly the type of property interest contemplated by standing regulations in 43 CFR 4.902.

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing requirements in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

is affected by failure to reserve such a public access easement.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Where an application for selection made by a Cook Inlet village corporation pursuant to § 12(b) of ANCSA is rejected by the Bureau of Land Management so that the same lands may be conveyed to Cook Inlet Region, Inc., under the terms of an amendment to ANCSA, and when an issue on appeal is whether the status of the lands in question is affected by the amendment, the village corporation's interest in the rejected application constitutes a property interest affected by a determination of the Bureau of Land Management sufficient to confer standing under the regulations in 43 CFR 4.902.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

CONVEYANCES

Generally

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

Acreage Entitlement

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Regional Conveyances

When, by amendment to the Alaska Native Claims Settlement Act, an act of Congress expressly provides that specifically described lands shall be conveyed in fee simple to Cook Inlet Region, Inc., as part of its § 12(c) entitlement under ANCSA, the Bureau of Land Management is required to make conveyance notwithstanding that the same land was earlier made available and application for selection had been filed by a Native village corporation under provision of § 12(b) of ANCSA.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Valid Existing Rights

Third-Party Interests

The Board will order the exclusion of a disputed Native allotment from the conveyance of lands pursuant to the Alaska Native Claims Settlement Act pending adjudication of the disputed allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

DEFINITIONS

Federal Installation

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Frivolous Appeal

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Holding Agency

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

DEFINITIONS--Continued

Public Lands

Generally

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Withdrawal for National Defense Purposes

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

EASEMENTS

Access

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant's assertions regarding public use of the lake, made in connection with an attempt to appeal navigability determinations, are equally relevant to the question of whether the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in

order to justify reservation of the public access easement he seeks.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

NAVIGABLE WATERS

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

WITHDRAWALS AND RESERVATIONS

Generally

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WITHDRAWALS AND RESERVATIONS--Continued

Generally--Continued

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(2) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

APPEALS

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of these matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

APPLICATIONS AND ENTRIES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

FILING

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

VESTED RIGHTS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

APPRAISALS

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

BOARD OF INDIAN APPEALS

JURISDICTION

The jurisdiction of the Board of Indian Appeals is governed by 43 CFR 4.330(a) and (b).

The jurisdiction of the Board of Indian Appeals is not determined by the characterization or descriptive title placed on agency action by the deciding official.

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs,
9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

BOARD OF LAND APPEALS

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

BUREAU OF INDIAN AFFAIRS

ADMINISTRATIVE APPEALS

Generally

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982)
89 I.D. 67

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs,
9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Acts of Agents of the United States

A decision not to honor a setoff request against an Individual Indian money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Acts of Agents of the United States--Continued

based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

CLAIMS BY THE UNITED STATES

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

COLOR OR CLAIM OF TITLE

GENERALLY

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

COMMUNICATION SITES

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

CONSTITUTIONAL LAW

GENERALLY

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Reirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress.

Estate of Mary Martin Mateas Andrew Caye, 9 IBIA 196 (Mar. 15, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

DUE PROCESS

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

CONTESTS AND PROTESTS

GENERALLY

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Evalt, 62 IBLA 116 (Mar. 4, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

CONTRACTS

CONSTRUCTION AND OPERATION

Actions of Parties

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Changed Conditions (Differing Site Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Contract Clauses

Where an architect designed a nearly flat roof having a pitch of 4 inches in 20 feet with specifications directing the construction contractor to install the roof in accordance with the manufacturer's installation manual, but the published literature of the manufacturer called for a minumum pitch of 3 inches per foot and contained no provision for installing a roof as designed by the architect, the Board found that leaks in the roof were the result of negligent performance of services on the part of the architect in the design of the building.

Appeal of the Eggers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

Differing Site Conditions (Changed Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81
(Feb. 12, 1982)

In a differing site condition claim under a contract for excavation of a tunnel in the Central Arizona Project where consulting geologists, retained by three different bidders as well as the manufacturer of the tunneling machine, each independently concluded that the geological data furnished by the Bureau of Reclamation indicated there would be sufficient standup time in the top and sides of the tunnel to permit installation of tunnel supports in accordance with the specifications, the Board found a differing site condition existed when the contractor encountered large blocks of rock with no standup time which fell immediately out of the top and sides of the tunnel, interfering with the cutterhead of the tunneling machine and with placement of the precast concrete segments for supporting and lining the tunnel.

In two separate differing site condition claims where the contractor encountered soft invert, which would not support the weight of the tunneling machine, the Board found that a differing site condition existed when the machine encountered a 9-foot layer of clay between two drill holes, neither of which showed a layer of clay, but the Board found there was no differing site condition when the machine encountered very soft rock between two drill holes where only 45 and 50 percent of the core material was recovered from the drill holes and the lack of recovery indicated that soft material, not suitable for coring, was present at the invert level.

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

General Rules of Construction

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

Subcontractors and Suppliers

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81
(Mar. 16, 1982) 89 I.D. 92

Third Persons

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81
(Mar. 16, 1982) 89 I.D. 92

Waiver and Estoppel

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

Warranties

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Warranties--Continued

provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79
(Jan. 29, 1982) 89 I.D. 30

CONTRACT DISPUTES ACT OF 1978

Interest

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79
(Jan. 29, 1982) 89 I.D. 30

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

Jurisdiction

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81
(Mar. 16, 1982) 89 I.D. 92

CONTRACTS--Continued

DISPUTES AND REMEDIES

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79
(Jan. 29, 1982) 89 I.D. 30

A construction contractor's claim for substantial increases in equitable adjustments allowed by the contracting officer for directed changes is denied where the Board finds that appellant has failed to sustain the burden of proving a causal connection between the costs claimed and the alleged Government actions, and failed to provide reliable cost data to show the Government computations were inadequate compensation for the changed work.

Appeals of Porter Mechanical Contractors, Inc., IBCA-1357-5-80 & IBCA-1366-6-80 (Feb. 1, 1982) 89 I.D. 53

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81
(Feb. 12, 1982)

Where a contractor's conduct and correspondence for a year after delivery of equipment shows acknowledgement of defects which it agrees to repair, a claim for reimbursement for the cost of the repair work is denied where the contractor is unable to prove that the defects did not actually exist.

Appeal of Terra Technology Corp., IBCA-1393-9-80
(Mar. 4, 1982)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages

Measurement

Where the Government failed to notify the architect that it had rejected a solution for leaks proposed by the manufacturer of the roof panels and forwarded by the architect, the Government's failure precluded the architect from submitting a proposal for a conventional built-up roof and resulted in unnecessary and avoidable expense when the Government had the roof repaired by another contractor at a higher cost. The architect was entitled to be paid the difference between the cost of the conventional roof and the higher cost which the Government had deducted from payments due the architect.

Appeal of the Eggers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

Equitable Adjustments

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

Termination for Convenience

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default

Generally

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982)
89 I.D. 100

FORMATION AND VALIDITY

Implied and Constructive Contracts

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982)
89 I.D. 92

PERFORMANCE OR DEFAULT

Acceptance of Performance

Under a fixed-price contract requiring a report in accordance with a statement of work contained in appellant's letter incorporated into the contract, the Board finds the final report was improperly rejected by applying acceptance criteria not contained in the contract.

Appeal of Easton Technologies, Inc., IBCA-1527-10-81 (Mar. 25, 1982)

Breach

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

Waiver and Estoppel

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Waiver and Estoppel--Continued

default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1394-9-80 (Mar. 4, 1982)

CONVEYANCES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

DESERT LAND ENTRY

GENERALLY

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

APPLICATIONS

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

LANDS SUBJECT TO

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

ENVIRONMENTAL POLICY ACT

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

ENVIRONMENTAL QUALITY

GENERALLY

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

EQUITABLE ADJUDICATION

GENERALLY

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in *Lola I. Doe*, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not

ESTOPPEL--Continued

constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

EVIDENCE

GENERALLY

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

EVIDENCE--Continued

GENERALLY--Continued

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

BURDEN OF PROOF

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

EVIDENCE--Continued

PREPONDERANCE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

PRESUMPTIONS

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Arsin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Faurer, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Bace et al., 63 IBLA 1 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

EVIDENCE--Continued

PRIMA FACIE CASE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

SUFFICIENCY

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

FEDERAL EMPLOYEES AND OFFICERS

AUTHORITY TO BIND GOVERNMENT

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERALLY

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.C.T.S., 61 IBLA 166 (Jan. 25, 1982)

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

ASSESSMENT WORK--Continued

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

INVENTORY AND IDENTIFICATION

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Mangagement determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

PERMITS

The provisions of sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1976), do not authorize the issuance of temporary use permits absent an existing right-of-way, or for use as a communications site right-of-way.

Dwight L. Zundel, 62 IBLA 81 (Feb. 25, 1982)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver M. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Noirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim in recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with *both* the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the

Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Calsbo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther M. Moore, 61 IBLA 391 (Feb. 18, 1982)

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas M. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William M. M. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

RIGHTS-OF-WAY

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is

RIGHTS-OF-WAY--Continued

not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

RULES AND REGULATIONS

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

WILDERNESS

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land

WILDERNESS--Continued

because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

While the extent of public support for wilderness preservation is not a proper factor to be considered during the inventory phase of the wilderness review mandated by sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), public comments which relate to the existence or nonexistence of wilderness characteristics within an inventory unit must be evaluated.

While the existence of a realistic possibility that land within an inventory unit possesses wilderness characteristics is sufficient to require that the land be intensively inventoried, such land may be included within a wilderness study area (WSA), only where it is shown that the statutory criteria have, in fact, been met.

Where BLM has refused to designate an area as a wilderness study area (WSA), pursuant to sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), an appellant must not merely show that various errors may have occurred in the consideration of the unit, but is required to show that these errors resulted in an erroneous conclusion as to the unit's suitability for further study.

Sierra Club, 61 IBLA 329 (Feb. 10, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter R. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

GEOTHERMAL LEASES

ACREAGE LIMITATIONS

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

APPLICATIONS

Generally

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

DISCRETION TO LEASE

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

REINSTATEMENT

A late rental payment may be "justifiable" and entitle a geothermal lease, which terminated by operation of law, to reinstatement if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, circumstances are within the control of the lessee where the proximate cause of a late payment was a computer error and not the illness of the individual entrusted with making the payment.

U.S. Geothermal Corp., Earth Power Corp., 61 IBLA 265 (Jan. 29, 1982)

GRAZING AND GRAZING LANDS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

GRAZING PERMITS AND LICENSES

GENERALLY

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

APPEALS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

APPORTIONMENT OF FEDERAL RANGE

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

HEARINGS

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

INDIAN LANDS

CEDED LANDS

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

LEASES AND PERMITS

Generally

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

Long-term Business/Agriculture

Rentals

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

PATENT IN FEE

Jurisdiction

While the Federal trust responsibility over allotted land is extinguished when ownership of the land is acquired by a non-Indian, an erroneous heirship determination involving an interest in trust lands passing to a non-Indian does not prevent correction of Department records when a fee patent has not yet been issued. Departmental regulations enable the Department

INDIAN LANDS--Continued

PATENT IN FEE--Continued

Jurisdiction--Continued

to correct its records to reflect the factual circumstances of the case and to correct discovery of legal error while the probate of a trust estate is still pending within the Department.

Estate of Bernita Elizabeth Stamp Payton, 9 IBIA 200 (Mar. 22, 1982)

INDIAN PROBATE

ADMINISTRATIVE PROCEDURE (*See also* HEARING, REHEARING--if included in this Index.)

Applicability to Indian Probate

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

ADOPTION (*See also* CHILDREN, ADOPTED--if included in this Index.)

Generally

Proof of adoption in Indian probate proceedings under the jurisdiction of the Department of the Interior is governed by Federal statute as expressed in 25 U.S.C. § 372a (1976).

Estate of Mary Martin Mataes Andrew Caye, 9 IBIA 196 (Mar. 15, 1982)

EVIDENCE

Insufficiency of

At a hearing ordered upon a petition for reopening an estate to permit evidence to be taken to rebut an initial determination of heirship, the burden of establishing that the initial order was in error is upon the petitioners. Proof that decedent was survived by a son offered by the mother of the child and supported by a State birth certificate and the judicial admission of decedent that the child was his son was not overcome by statements of other relatives of decedent that decedent had denied paternity and conducted himself as though he were childless.

Estate of Robert M. Morin, 9 IBIA 188 (Mar. 5, 1982)

INDIAN PROBATE--Continued

KLAMATH TRIBE

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

REOPENING

Generally

A petition to reopen an Indian estate and its supporting documentation must, to be favorably considered, present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

Estate of Mary Martin Mataes Andrew Caye, 9 IBIA 196 (Mar. 15, 1982)

STATE LAW

Applicability to Indian Probate, Testate

The Administrative Law Judge correctly ruled that the determination of the identity of all a decedent's heirs is unnecessary in a case where there is found to be a valid will disposing of the testator's entire estate.

Estate of Frank (Francis) Keahtigh, 9 IBIA 190 (Mar. 9, 1982)

WILLS (*See also* CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)

Generally

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exarted upon her at times not relevant to the probate proceeding based upon evidence of record.

INDIAN PROBATE--Continued

WILLS (*See also* CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Generally--Continued

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

Testamentary Capacity

Witnesses' Testimony

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since youth and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and directed devises of trust property to each of her surviving children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children ultimately benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable under the circumstances.

Where the witnesses to an Indian will were agency clerks who were acquainted through prior business dealings with decedent and testified they knew her to be the competent manager of a farm composed largely of trust lands which she was instrumental in acquiring through land purchases, exchanges, and leases which she arranged, the testimony of a group of treating physicians concerning the effect of two amputations upon decedent's overall health did not tend to contradict the witnesses' testimony that decedent was competent to make a will, nor did the fact that decedent had become an invalid indicate that she lacked competence to make a will.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

INDIAN REORGANIZATION ACT

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

INDIAN TRIBES

CONSTITUTION, BYLAWS AND ORDINANCES

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the

INDIAN TRIBES--Continued

CONSTITUTION, BYLAWS AND ORDINANCES--Continued

circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

ELECTIONS

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

FEDERAL RECOGNITION

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

JUDGMENT FUNDS

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

INDIANS

FISCAL AND FINANCIAL AFFAIRS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

GUARDIANSHIP

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the

INDIANS--Continued

GUARDIANSHIP--Continued

circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

INDIVIDUAL INDIAN MONEY ACCOUNTS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

TRUSTS

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

LACHES

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

MINERAL LEASING ACT

GENERALLY

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands

MINERAL LEASING ACT--Continued

GENERALLY--Continued

within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

APPLICABILITY

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

COMBINED HYDROCARBON LEASES

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

LANDS SUBJECT TO

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

MINING CLAIMS

GENERALLY

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

ABANDONMENT

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

William M. M. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther M. Moore, 61 IBLA 391 (Feb. 18, 1982)

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas M. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Kauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Reirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim M. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. The burden of proof of the intent to abandon rests upon the party who asserts it, and the proof must be clear and convincing. Where the evidence is persuasive that a notice of abandonment mistakenly described the wrong claim, and that the claimant thereafter remained in occupancy and possession for many years, there was neither an intent to abandon nor actual abandonment, and the erroneous notice may be repudiated.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year

thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

If the owner of a mining claim located on or before Oct. 21, 1976, recorded his claim with BLM in 1977, he was required under 43 CFR 3833.2-1(a) to file a copy of evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30, 1978. Because this particular filing is not required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), a decision declaring such a claim abandoned and void for failure to file the required document will be reversed where the owner of the claim complied with the statutory filing requirements and subsequently filed the document required by the regulation.

W. Verne Kight, Eva M. Kight (On Reconsideration), 61 IBLA 216 (Jan. 28, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirement of 43 CFR 3833.2-1.

Douglas S. Overman, 62 IBLA 397 (Mar. 25, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

CONTESTS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

MINING CLAIMS--Continued

CONTESTS--Continued

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Evalt, 62 IBLA 116 (Mar. 4, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

DETERMINATION OF VALIDITY

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

DISCOVERY

Generally

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met generally where it appears that mineralization on the claim has been physically exposed and evidence shows the mineral deposit is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

LANDS SUBJECT TO

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert E. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

LOCATION

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

Where a mining claimant seeks to amend various mining claims, there must be some way to ascertain which claims, in fact, are being amended. Where it is impossible to identify specific claims with specific amendments, the amendment can be of no force or effect.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

MILLSITES

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

PLACER CLAIMS

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

MINING CLAIMS--Continued

RECORDATION

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William E. R. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver N. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Arvin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location

for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Bace et al., 63 IBLA 1 (Mar. 25, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

MINING CLAIMS--Continued

RELOCATION

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

WITHDRAWN LAND

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

MINING CLAIMS RIGHTS RESTORATION ACT

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

MISTAKES

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

NATIONAL PARK SERVICE

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as

NATIONAL PARK SERVICE--Continued

required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

NOTICE

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl B. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

NOTICE--Continued

GENERALLY--Continued

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

OIL AND GAS LEASES

GENERALLY

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur R. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur R. Frank, 61 IBLA 202 (Jan. 26, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Finklea, 63 IBLA 81 (Mar. 30, 1982)

ACQUIRED LANDS LEASES

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

APPLICATIONS

Generally

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Weed, 61 IBLA 213 (Jan. 28, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlin D. Hass, 61 IBLA 338 (Feb. 10, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William H. Burruss, 62 IBLA 40 (Feb. 24, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack M. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

When land has previously been included in a lease that has terminated, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system under 43 CFR 3112.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert R. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Cheryl R. Cocksey, 62 IBLA 307 (Mar. 18, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Rood, 62 IBLA 391 (Mar. 24, 1982)

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Wanston, 61 IBLA 199 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry E. Weed, 61 IBLA 213 (Jan. 28, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack R. Mosely, Charles S. Mertz, 62 IBLA 220 (Mar. 10, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert R. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Description

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Papulak, 63 IBLA 16 (Mar. 26, 1982)

Drawings

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur R. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur R. Frank, 61 IBLA 202 (Jan. 26, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Richard M. Sporcic, 62 IBLA 159 (Mar. 8, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The language in 43 CFR 3112.6-1(c)(4), which prohibits separate filings by a trustee on behalf of two or more beneficiaries on the same parcel, is a per se prohibition and means that a trustee for two or more discrete trusts may file application on behalf of only one trust for any one parcel.

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents to the sibling survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease applications by more than one such trust for the same parcel is therefore violative of 43 CFR 3112.6-1(c), which prohibits the filing of multiple offers.

Bruce A. Blakemore Estate Trust and James E. Blakemore Trust, 62 IBLA 336 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlin D. Hass, 61 IBLA 338 (Feb. 10, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William H. Burruss, 62 IBLA 40 (Feb. 24, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert E. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Finkles, 63 IBLA 81 (Mar. 30, 1982)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

640-acre Limitation

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Sole Party in Interest

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1962)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement signed by himself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Richard M. Sgorcic, 62 IBLA 159 (Mar. 8, 1982)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

ASSIGNMENTS OR TRANSFERS

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

been a legal discrepancy when the lease was initially issued.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee to hold Federal oil and gas leases or lack of sufficient bond. However, the failure to submit three manually executed assignment forms as required by 43 CFR 3106.2-2, is a curable defect.

North Central Oil Corp., 62 IBLA 38 (Feb. 24, 1982)

Where a proposed assignment has been filed with BLM but has not yet been approved, the original lessee of an oil and gas lease is the holder of record.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

BONA FIDE PURCHASER

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

A bona fide purchaser must have acquired his interest in an oil and gas lease in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent man on inquiry which if followed with reasonable diligence would lead to discovery of defects in title or equitable rights of others affecting the lease.

The knowledge of the assignee's agent and/or employee acting for the principal in connection with obtaining the lease is generally attributable to the assignee in determining whether the assignee qualifies as a bona fide purchaser.

Payment of valuable consideration prior to knowledge or notice of a superior right is a necessary element of bona fide purchaser status.

Richard W. Eckels, 62 IBLA 1 (Feb. 22, 1982)

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. E. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

CANCELLATION

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

COMPETITIVE LEASES

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

DESCRIPTION OF LAND

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Papulak, 63 IBLA 16 (Mar. 26, 1982)

DISCOVERY

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

DISCOVERY--Continued

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

DISCRETION TO LEASE

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Under sec. 17 of the Mineral Leasing Act of 1920, *as amended*, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

FIRST-QUALIFIED APPLICANT

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

FUTURE AND FRACTIONAL INTEREST LEASES

Where the Government owns a 50 percent mineral interest in certain acquired lands and subsequently obtains the remaining 50 percent mineral interest in those lands at a time in which the original interest is not under lease, the Government may not thereafter issue a fractional interest lease for these lands.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

LANDS SUBJECT TO

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The fact that oil and gas leases may have been wrongly issued in the past for lands which were not available for leasing does not militate in favor of reenacting the wrong for the sake of consistency or to avoid discriminatory treatment of a subsequent offeror.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

W. E. Haley, 62 IBLA 294 (Mar. 16, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Rood, 62 IBLA 391 (Mar. 24, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

NONCOMPETITIVE LEASES

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

OVERRIDING ROYALTIES

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

PRODUCTION

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

REINSTATEMENT

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James B. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's inadvertent misplacement of office records during the changeover in his office location.

David B. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

RELINQUISHMENTS

Where a lessee relinquishes an oil and gas lease, he is exercising a right given to him by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide

OIL AND GAS LEASES--Continued

RELINQUISHMENTS--Continued

purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. M. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

RENTALS

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of

OIL AND GAS LEASES--Continued

RENTALS--Continued

law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

RIGHTS-OF-WAY LEASES

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

STIPULATIONS

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James B. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 194 (Mar. 9, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

TERMINATION

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James M. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days after the anniversary date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

OIL SHALE

WITHDRAWALS

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

TIMBER SALES

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

PATENTS OF PUBLIC LANDS

GENERALLY

A decision holding that title to a tract of land has reverted to the United States will be affirmed where the land together with its improvements was patented to a municipality to be used only for school or other public purposes subject to reversion if the Secretary of the Interior finds the grantee has violated the conditions for a period of 1 year and where the record discloses that grantee has removed the school structures thereon and failed to use the land for 15 years thereafter.

City of Cordova, 62 IBLA 198 (Mar. 9, 1982)

RESERVATIONS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

PAYMENTS

GENERALLY

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

POWERSITE LANDS

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James B. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

PUBLIC LANDS

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

PUBLIC SALES

APPLICATIONS

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

SALES UNDER SPECIAL STATUTES

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

REGULATIONS

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Boirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982)
89 I.D. 71

REGULATIONS--Continued

GENERALLY--Continued

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

BINDING ON THE SECRETARY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

INTERPRETATION

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

RES JUDICATA

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

RIGHTS-OF-WAY

GENERALLY

Where a subdivision builder is granted a right-of-way for an access road and bridge pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), with the understanding that a county or town will take over the right-of-way, but an assignment to the county or town has not been approved by BLM, the builder is liable for the rental, and the exemption from payment of rental for a local government under 43 CFR 2803.1-2(c)(1) does not apply.

Carpentry Unlimited, Inc., 62 IBLA 203 (Mar. 9, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

ACT OF MARCH 4, 1911

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

CANCELLATION

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial

act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

FEDERAL HIGHWAY ACT

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

An application by a state highway department for a material site right-of-way on public land is properly denied where the applicant fails to demonstrate that the material is reasonably necessary for the construction or maintenance of a highway or where such disposition would not be consistent with other public purposes as determined by the Bureau of Land Management. Where the application is denied on the basis of a determination that it would preempt the public's only available source of cinders within 40 miles and appellant contradicts this by identifying other public sources, the decision rejecting the application will be set aside and the case remanded for further consideration of alternatives that would meet the needs of the applicant without sacrificing other public purposes.

Utah Dept. of Transportation, 62 IBLA 176 (Mar. 8, 1982)

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

RULES OF PRACTICE

GENERALLY

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

APPEALS

Generally

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious cn. where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Dismissal

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

Hearings

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

Standing to Appeal

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982)
89 I.D. 67

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

Timely Filing

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

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Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

GOVERNMENT CONTESTS

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

RULES OF PRACTICE--Continued

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

SECRETARY OF THE INTERIOR

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

SEGREGATION

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a

SEGREGATION--Continued

fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

SODIUM LEASES AND PERMITS

LEASES

Sodium leases, which have a determinate 20-year primary term, are not automatically extended or renewed. The Secretary may renew the lease upon the lessee's timely application for renewal.

The lessee's preference right at the time of renewal under sec. 24 of the Mineral Lands Leasing Act is only to be preferred above other applicants and is not an entitlement, as against the United States, to a renewal lease.

In adjudicating an application for renewal of a sodium lease, the Secretary retains his discretion respecting whether or not to lease. That discretion is limited in that if the decision is made to lease, a preference is extended to the existing lessee who has made timely application.

Existing sodium leases which are beyond their primary term but for which the lessee has made timely application for renewal are continued in force by the provisions of sec. 9 of the Administrative Procedure Act so long as it takes the Department to adjudicate the application.

Sodium Lease Renewals, M-36943 (Mar. 18, 1982)
89 I.D. 173

SPECIAL USE PERMITS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and

SPECIAL USE PERMITS--Continued

the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

STATE LAWS

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

STATUTES

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

STATUTES--Continued

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Poirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

STATUTORY CONSTRUCTION

GENERALLY

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Mace et al., 63 IBLA 1 (Mar. 25, 1982)

STATUTORY CONSTRUCTION--Continued

IMPLIED REPEALS

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

SUBMERGED LANDS

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd., and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

ABATEMENT

Generally

Where the record evidence does not support a finding that the recipient of a notice of violation requested an extension of time to abate a violation charged in the notice, prior to OSM's issuance of a cessation order for failure to abate the violation within the time prescribed for abatement, OSM's cessation order is properly upheld against the recipient's claim that conditions at the mine site warranted an extension of the abatement time.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

APPLICABILITY

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

CIVIL PENALTIES

Amount

Under 30 CFR 723.15(b), OSM is required to assess a civil penalty of not less than $750 per day for each day during which a cessation order properly remains outstanding, up to a limit of 30 days.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

HYDROLOGIC SYSTEM PROTECTION

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

ROADS

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982) 89 I.D. 113

VARIANCES AND EXEMPTIONS

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Sedimentation Ponds

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Sedimentation Ponds--Continued

and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

WORDS AND PHRASES

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982) 89 I.D. 113

TAR SANDS

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

TIMBER SALES AND DISPOSALS

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

Diana Coogle et al., 61 IBLA 393 (Feb. 22, 1982)

TIMBER SALES AND DISPOSALS--Continued

A.C.C.T.S., 61 IBLA 396 (Feb. 22, 1982)

A.C.C.T.S., 62 IBLA 43 (Feb. 24, 1982)

Alan Winter et al., 62 IBLA 299 (Mar. 18, 1982)

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Robert H. Barker, 62 IBLA 331 (Mar. 23, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

UNIFORM RELOCATION ASSISTANCE

Generally

Where the claim for additional moving and related costs was filed after the time limitation prescribed by Departmental regulations implementing the Relocation Act, and the record as a whole does not justify an extension of time for filing an additional claim, the claim is properly denied.

Uniform Relocation Assistance Appeal of E. Ray Sinclair, 4 OHA 216 (Jan. 4, 1982)

Where judgment required the claimant to remove certain fixtures to the real property, to which claimant had retained removal rights, and claimant failed to remove such property within the required time, such removal rights are properly treated as abandoned and the property remains in the United States.

Uniform Relocation Assistance Appeal of D. Stamatc & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where claimant began occupancy of the acquired property after the acquisition by the Government had been completed, his subsequent move from the property is not as a result of the acquisition by the Government; hence claimant is not a displaced person, and is not eligible for benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Mike P. Gogliano and B. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Moving and Related Expenses

Generally

Reimbursement is not allowable for costs of moving structures or other improvements in which the displaced person reserved ownership rights.

Where claim includes request for payment of moving expense that is not adequately substantiated by supporting data, the acquiring agency requests additional

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

supporting data, and such additional data are not supplied within a reasonable time, the claim for such expenses is properly denied.

Uniform Relocation Assistance Appeal of D. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where the record on appeal establishes that claimant failed to remove signboards from property acquired by the Park Service after several notices, and Park Service thereafter properly removed signs as abandoned property, payment of benefits in an amount equal to the actual reasonable expense required to relocate such signs was proper under sec. 202 of the Act and implementing Departmental regulations.

Uniform Relocation Assistance Appeal of Rich Outdoor Advertising Co., 4 OHA 234 (Feb. 5, 1982)

Where claimant has not established his claim with sufficient evidence, and where decision of the Bureau official below is supported by the record, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mike R. Guiliano and B. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

A claim for a fixed payment under § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, is properly disallowed where the claimant fails to establish that the business cannot be relocated without a substantial loss of its existing patronage.

Uniform Relocation Assistance Appeal of John P. Friel, Esq., 4 OHA 244 (Mar. 8, 1982)

Replacement Housing Payment for Homeowners

Generally

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits an adjusted price rather than the list price of the dwelling found by the Park Service to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James D. Cahill, 4 OHA 229 (Jan. 29, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Where the record shows the claimants have received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act and the Department's implementing regulations, the determination appealed from will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Dan J. Biro, 4 OHA 240 (Feb. 16, 1982)

WILD AND SCENIC RIVERS ACT

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

WILDERNESS ACT

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Don Coors et al., 61 IBLA 300 (Feb. 3, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter B. Benoit, 62 IBLA 99 (Mar. 1, 1982)

WILDERNESS ACT--Continued

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

WILDERNESS ACT--Continued

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

POWERSITES

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

WORDS AND PHRASES

"*Bona fide purchaser*." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

"*Roadless*." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively

WORDS AND PHRASES--Continued

regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

"*Public lands*." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

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Office of Hearings and Appeals -- James A. Limb, Director

Office of the Solicitor -- William H. Coldiron, Solicitor

INDEX-DIGEST

JANUARY-JUNE 1982

This index-digest covers all published and important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through June 30, 1982, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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SYMBOLS

ANCAB - Alaska Native Claims Appeals Board
IA-T - Indian Appeals--Tort
IBCA - Interior Board of Contract Appeals
IBIA - Interior Board of Indian Appeals
IBLA - Interior Board of Land Appeals
IBSMA - Interior Board of Surface Mining Appeals
M - Solicitor's Opinion
OHA - Office of Hearings and Appeals
SEC - Office of the Secretary

ACCOUNTS

FEES AND COMMISSIONS

The Bureau of Land Management may properly charg fees for special recreation permits authorizing comme cial rafting on the Rogue River, a designated wild an scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesti the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations o that the new fee levels have no reasonable basis unde the regulations, a decision denying the protest will affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issu special recreation permits authorizing use of special areas such as a designated wild and scenic river, fee must be charged for noncommercial as well as commerci users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

PAYMENTS

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either pos office or bank money order.

A bank personal money order is an acceptable for of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

REFUNDS

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rental pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Romola A. Jarett, 63 IBLA 228 (Apr. 16, 1982)
89 I.D. 20

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authorit granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use managemen duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 198

ACT OF MARCH 3, 1891

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn H. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald E. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

ACT OF SEPTEMBER 19, 1914

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

ACT OF NOVEMBER 9, 1921

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

ACT OF MAY 21, 1930

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a

ACT OF MAY 21, 1930--Continued

person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

ACT OF AUGUST 11, 1955

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

ACT OF SEPTEMBER 19, 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

ACT OF DECEMBER 24, 1970

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

ADMINISTRATIVE AUTHORITY

GENERALLY

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

ADMINISTRATIVE PRACTICE

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

ADMINISTRATIVE PRACTICE--Continued

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Sutton Resources Co., 65 IBLA 178 (June 29, 1982)

ADMINISTRATIVE PROCEDURE

GENERALLY

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provisions.

D. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Kuonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so. In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Ray, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

BURDEN OF PROOF

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor D. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

DECISIONS

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and NIMT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Enckloch, 61 IBLA 297 (Feb. 3, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 303 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 166 (May 25, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 26, 1982)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

ALASKA

HOMESITES

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 98 (June 23, 1982)

NATIVE ALLOTMENTS

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected without finality, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

In sec. 905(d) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsec. (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, *as amended*, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), *as amended*, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, *as amended*.

Wayne C. Williams (On Reconsideration), 61 IBLA 181 (Jan. 26, 1982)

David E. Stevens, 64 IBLA 72 (May 10, 1982)

Where the State Office rejects a Native allotment application because it was deficient in form and untimely filed and the applicant argues that he timely and properly filed the application, and where the factual record does not clearly support either view, the case will be remanded for a hearing.

Charlie D. Biederman, 61 IBLA 189 (Jan. 26, 1982)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to require an applicant for a Native allotment to *complete* 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the *commencement* of use and occupancy or the *filing* of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittant use.

Andrew Gordon McKinley, Arnie Bennett (On Reconsideration), 61 IBLA 282 (Feb. 2, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(a)(5)(A), (B), and (C) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that paragraph (1) of this subsection and subsec. (d) shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, *as amended*, if on or before the 180th day following the effective date of this Act the State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. However, where the State's protest describes land which is clearly different from the land claimed by the Native applicant, the Board will instruct BLM to grant the allotment, provided all else is regular.

United States v. Mary S. Napouk, 61 IBLA 316 (Feb. 8, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Steven Bergman (On Reconsideration), 61 IBLA 399 (Feb. 22, 1982)

Heirs of Macauley Alakayak (On Reconsideration), 62 IBLA 90 (Feb. 25, 1982)

Heirs of Pete Olson, 63 IBLA 64 (Mar. 30, 1982)

Nina Harris, 63 IBLA 74 (Mar. 30, 1982)

Heirs of Madrona Wassillie (On Reconsideration), 64 IBLA 167 (May 25, 1982)

Elsie Bergman (On Reconsideration), 64 IBLA 180 (May 26,1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of these parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, *inter alia*, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

The Department of the Interior is authorized to approve only Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that she had delivered her application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

Where conflicting evidence contained in a file raises factual issues, BLM should initiate a Government contest so that the factual issues can be resolved at a hearing.

Nora L. Sanford (On Reconsideration), 63 IBLA 335 (Apr. 28, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970) (repealed 1971).

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 383 (Apr. 28, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

June 10, 1920, as amended, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, as amended.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

Where a Native allotment application has been rejected for failure to provide adequate evidence of use and occupancy, the case will be remanded to BLM to be held for approval pursuant to sec. 905(a) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2435 (1980), subject to the restrictions of sec. 905(d) on allotments of land withdrawn or classified for powersite purposes, in the absence of the filing of a protest prior to the 180th day following the effective date of the Act.

Myrtle Jaycox, Serafina Anelon, Niles C. Eakon (On Reconsideration), 64 IBLA 97 (May 17, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

Emily B. Hunt (On Reconsideration), 64 IBLA 304 (June 8, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where an application for an allotment describes specific land for which an allotment is sought, but on which land the applicant cannot show the requisite use and occupancy, the death of the allotment applicant terminates all right of reselection by the applicant, and his heirs or his estate may not seek to amend the land description to embrace other land.

"Pending." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and. therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

OIL AND GAS LEASES

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Kenneth Navarre, 64 IBLA 357 (June 15, 1982)

STATEHOOD ACT

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

ALASKA--Continued

TOWNSITES

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

TRADE AND MANUFACTURING SITES

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

The use and improvement of land in a trade and manufacturing site for the pasturing of horses, the placement of advertising signs for off-site businesses, or the presence of roads which merely cross the land to give access to other property, cannot serve to qualify the claimant to receive title to the site, as all those uses are controlled by other provisions of law and regulation, and are not cognizable as the conduct of "trade, manufacture, or other productive industry" on the site.

Where the claimant to a trade and manufacturing site, which was located for the benefit of businesses being conducted on her husband's adjacent unpatented homestead, relinquishes approximately half the land and the primary improvements on the site so that those lands may be included in the survey of the homestead, her trade and manufacturing site purchase application must be rejected if the remaining lands are not actually occupied by improvements and used and needed in the prosecution of the businesses.

One who is not the owner of the business enterprise which is to be served by activities conducted on a trade and manufacturing site is not a qualified claimant of the site.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

GENERALLY

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, inter alia, notice and an opportunity for a hearing.

Bill Bekeferoff, 62 IBLA 170 (Mar. 8, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982)
89 I.D.

ADMINISTRATIVE PROCEDURE

Generally

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D.

43 CFR 4.913(b) provides:

> Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

Conveyances

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia

Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982)
89 I.D.

Decision to Issue Conveyance

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Where in a decision to issue conveyance the Bureau of Land Management lists certain water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, there is no requirement in ANCSA or its implementing regulations that the BLM list those water bodies, if any, which were determined to be nonnavigable and the beds of which are to be conveyed to the grantee corporation(s) and charged against its entitlement.

The Bureau of Land Management is not required to include in a decision to issue conveyance a written statement of reasons for its navigability determinations, if any.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982)
89 I.D.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

ALASKA NATIVE CLAIMS APPEAL BOARD

Appeals

Generally

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982)
89 I.D. 74

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D.

Decisions

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982)
89 I.D. 74

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board fails to timely respond to an order of the Board requiring that the appellant file notice as to whether it intends to pursue its appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 264 (Jan. 15, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain no issues to be resolved by the Board.

Clara Helgason, 6 ANCAB 267 (Jan. 15, 1982)

An appeal will be dismissed when the decision appealed from is amended pursuant to Board order based upon a stipulation entered into by the parties and a timely appeal has not been taken from the published amended decision.

Kwik, Inc., 6 ANCAB 304 (Jan. 27, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Northway Natives, Inc., 6 ANCAB 338 (Jan. 29, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

State of Alaska, 7 ANCAB 1 (Mar. 8, 1982)

R. Gregory Read, 7 ANCAB 42 (Apr. 9, 1982)

State of Alaska, Dept. of Transportation & Public Facilities, 7 ANCAB 92 (June 10, 1982)

Danzhit Hanlaii Corp., 7 ANCAB 94 (June 10, 1982)

Doyon, Ltd., 7 ANCAB 96 (June 10, 1982)

State of Alaska, 7 ANCAB 98 (June 10, 1982)

State of Alaska, 7 ANCAB 100 (June 10, 1982)

State of Alaska, 7 ANCAB 102 (June 10, 1982)

Ingalik, Inc., 7 ANCAB 104 (June 14, 1982)

An appeal will be dismissed when the appellant fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Matanuska-Susitna Borough, 7 ANCAB 4 (Mar. 24, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board is in agreement with a motion to dismiss filed by another party to the appeal.

Matanuska-Susitna Borough, 7 ANCAB 89 (May 20, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed on jurisdictional grounds, the Board will dismiss the appeal.

William T. Straub, 7 ANCAB 184 (June 23, 1982)

Helge A. Boquist, 7 ANCAB 186 (June 23, 1982)

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed and when the motion for dismissal asserts as a basis therefore appropriate provisions of 43 CFR 4.900 *et seq.*, the Board will dismiss the appeal.

Chickaloon Moose Creek Native Ass'n, Inc., 7 ANCAB 200 (June 24, 1982)

Absent reasons justifying continuance of the appeal as to a specific issue therein, the issue will be dismissed when resolved by settlement stipulation approved by the Alaska Native Claims Appeal Board.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Terry, 7 ANCAB 206 (June 25, 1982)

Jurisdiction

The Board is without jurisdiction to adjudicate the validity of a Native allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

Where the present appeal is Tetlin's first opportunity to challenge BLM's delineation of the land to which they are entitled under ANCSA, their appeal directly addresses a land selection matter within the meaning of 43 CFR 4.1(b)(5) and the appeal is within the Board's jurisdiction.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982)
89 I.D.

Parties

The State of Alaska's motion to intervene will not be granted where the granting of such motion would permit the State to pursue, as an appellant, issues which the State failed to appeal timely and which the appellant has been denied standing to raise.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Remand

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Settlement Approval

43 CFR 4.913(b) provides:

> Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Terry, 7 ANCAB 206 (June 25, 1982)

Standing

The test for standing to appeal a decision under 43 CFR 4.902 requires, in part, that the appellant claim a property interest within the meaning of the regulation. To appeal a § 17(b)(1) public easement decision this portion of the standing requirement is satisfied when the appellant's property interest consists of a § 14(g) valid existing right to which the conveyance of lands under ANCSA is subject.

An appellant claiming standing to appeal a § 17(b)(1) public easement decision must not only claim to have a property interest, but in order to meet the standing test of 43 CFR 4.902, must further assert that the appealed decision affects that property interest by

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

failing to provide the appellant and the public with access to public lands.

Ray DeVilbiss (Wolverine Grazers Ass'n), 6 ANCAB 290 (Jan. 27, 1982) 89 I.D. 9

The appropriate test of standing to appeal a decision to this Board is not whether a person is an aggrieved party, but whether a person claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed.

In response to arguments that the test of whether a person is aggrieved should be applied because it is consistent with judicial requirements for standing, the Board must find itself bound by its own regulations for standing, which require a claim of property interest.

The mere allegation of ownership and use of State and Federal lands as a member of the public does not constitute a claim of property interest in land as is required for standing under regulations in 43 CFR 4.902.

A fee simple ownership interest in a fishing lodge is clearly the type of property interest contemplated by standing regulations in 43 CFR 4.902.

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing requirements in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Walt Nanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Where an application for selection made by a Cook Inlet village corporation pursuant to § 12(b) of ANCSA is rejected by the Bureau of Land Management so that the same lands may be conveyed to Cook Inlet Region, Inc., under the terms of an amendment to ANCSA, and when an issue on appeal is whether the status of the lands in question is affected by the amendment, the village corporation's interest in the rejected application constitutes a property interest affected by a determination of the Bureau of Land Management sufficient to confer standing under the regulations in 43 CFR 4.902.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 78

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

A riparian owner cannot claim that a determination that a water body is nonnavigable adversely affects his property interest so as to confer standing to appeal within the meaning of regulations in 43 CFR 4.902, where the appeal seeks to have the same water body found navigable and thereby deprive the appellant of a claim of riparian ownership rights.

Decisions made pursuant to ANCSA affect property interests differently with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 282

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

When pursuant to lawful authority, lands are withdrawn by Secretary's Order for an Air Navigation Site for the benefit of the Territory of Alaska, and when the Secretary's Order was not rescinded upon Statehood, and the State of Alaska continued operation of the ANS facility, the State has standing to assert a claim of property interest, within the meaning of 43 CFR 4.902, for purposes of appealing the status of the ANS.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D.

CONVEYANCES

Generally

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

The conveyance to Cook Inlet Region, Inc. (CIRI), of lands previously patented to the State of Alaska pursuant to P.L. 94-204, 89 Stat. 1145, *as amended* (1976), is in satisfaction of CIRI's ANCSA entitlement; must be treated as a conveyance pursuant to ANCSA; and, unless expressly excepted, is governed by the provisions of ANCSA as interpreted by the courts.

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in *Alaska Public Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Acreage Entitlement

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Nanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Interim Conveyance

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D.

Reconveyances

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, *as amended*, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D.

Regional Conveyances

When, by amendment to the Alaska Native Claims Settlement Act, an act of Congress expressly provides that specifically described lands shall be conveyed in fee simple to Cook Inlet Region, Inc., as part of its § 12(c) entitlement under ANCSA, the Bureau of Land Management is required to make conveyance notwithstanding that the same land was earlier made available and application for selection had been filed by a Native village corporation under provision of § 12(b) of ANCSA.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Regional Conveyances--Continued

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982)
89 I.D.

Valid Existing Rights

Generally

When the State of Alaska has continued operation of an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never made application for the withdrawn land under any Federal law, the State's use of the ANS is not "issued" within the meaning of § 14(g) of ANCSA and whatever right the State has to continued use of the land is not protected pursuant to § 14(g).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D.

Third-Party Interests

The Board will order the exclusion of a disputed Native allotment from the conveyance of lands pursuant to the Alaska Native Claims Settlement Act pending adjudication of the disputed allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, *as amended*, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D.

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, *as amended*, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D.

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in *Appeals of State of Alaska and Seldovia Native Ass'n, Inc.*, 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982) 89 I.D.

DEFINITIONS

Federal Installation

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Frivolous Appeal

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Holding Agency

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Public Lands

Generally

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Withdrawal for National Defense Purposes

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

EASEMENTS

Access

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant's assertions regarding public use of the lake, made in connection with an attempt to appeal navigability determinations, are equally relevant to the question of whether the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Access--Continued

order to justify reservation of the public access easement he seeks.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant has appealed the Bureau of Land Management's failure or refusal to reserve a trail easement to the lake, and appellant's assertions indicate some possibility that the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Public Easements

Criteria for reserving public easements for future roads, including railroads, in 43 CFR 2650.4-7(b)(1)(v) require that such easements be both site specific and actually planned for construction within 5 years of the date of conveyance. The minimal submission of a map, along with a letter stating that the map depicts proposed railroad extensions, cannot be found to demonstrate an actual plan for construction within the meaning of the regulation.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Railroads, Telegraph and Telephone Lines

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in *Alaska Public Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

NATIVE LAND SELECTIONS

Generally

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D.

NAVIGABLE WATERS

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of

Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURVEY

Generally

Where § 13(b) of ANCSA addresses events in the land conveyance process which occur over a period of 3 years or longer, during which time surveys and protraction diagrams may be changed or corrected, it would be unreasonable to conclude that such changes or corrections must be ignored in deference to the survey or protraction in existence on Dec. 18, 1971.

Sec. 13(b) of ANCSA is not a mechanism to determine land entitlement, but is intended to ensure that land is described through use of the most accurate protraction diagrams or surveys.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D.

WITHDRAWALS AND RESERVATIONS

Generally

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

APPEALS

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

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APPEALS--Continued

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray May, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

APPLICATIONS AND ENTRIES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn B. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

FILING

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp., et al., 61 IBLA 120 (Jan. 15, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

INHERITABILITY

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Deemar, 63 IBLA 217 (Apr. 13, 1982)

PRIORITY

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

APPLICATIONS AND ENTRIES--Continued

REINSTATEMENT

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, *as amended*, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

VESTED RIGHTS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

APPRAISALS

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis B. Gifford, 62 IBLA 393 (Mar. 24, 1982)

APPRAISALS--Continued

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

ATTORNEY'S FEES

EQUAL ACCESS TO JUSTICE ACT

An administrative appeal not required by statute to be adjudicated according to the provisions of 5 U.S.C. § 554 (1976) is not covered by the attorney's fees provisions of the Equal Access to Justice Act.

In re Attorney's Fees Request of Madelon Blum, 9 IBIA 281 (May 11, 1982) 89 I.D. 241

INDIAN CHILD WELFARE ACT OF 1978

Under the circumstances of this case, there is no authority under the Indian Child Welfare Act of 1978 to pay attorney's fees to appellant.

In re Attorney's Fees Request of Ronald Clabaugh, 9 IBIA 294 (May 26, 1982) 89 I.D. 257

ATTORNEYS

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

BOARD OF INDIAN APPEALS

JURISDICTION

The jurisdiction of the Board of Indian Appeals is governed by 43 CFR 4.330(a) and (b).

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The jurisdiction of the Board of Indian Appeals is not determined by the characterization or descriptive title placed on agency action by the deciding official.

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

The Board has jurisdiction to determine whether a decision by an official of the BIA is properly characterized as discretionary.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

BOARD OF LAND APPEALS

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

BUREAU OF INDIAN AFFAIRS

ADMINISTRATIVE APPEALS

Generally

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982) 89 I.D. 67

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe. 9 IBIA 284 (May 26, 1982) 89 I.D. 252

Acts of Agents of the United States

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs. 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

CLAIMS BY THE UNITED STATES

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorized the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

COAL LEASES AND PERMITS

LEASES

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp., et al., 63 IBLA 363 (Apr. 29, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

COLOR OR CLAIM OF TITLE

GENERALLY

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Hauges et al., 63 IBLA 12 (Mar. 25, 1982)

GOOD FAITH

"Good faith." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willmorth, 64 IBLA 159 (May 25, 1982)

COMMUNICATION SITES

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis M. Gifford, 62 IBLA 393 (Mar. 24, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

CONSTITUTIONAL LAW

GENERALLY

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Connorvichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress.

Estate of Mary Martin Mataes Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

DUE PROCESS

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

CONTESTS AND PROTESTS

GENERALLY

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts.

Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn H. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

CONTRACTS

CONSTRUCTION AND OPERATION

Actions of Parties

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs

Where a Government audit of a cost-plus-fixed-fee contract raised questions about the reasonableness of certain items of cost and the allocability of other cost items, and the contracting officer's decision generally followed the findings in the audit report, the reasonableness of cost items was a question of fact for the Board to decide and the allocability of costs pursuant to procurement regulations was likewise a matter for the Board to decide.

Onyx Corp., IBCA-1350-4-80 (Apr. 14, 1982)

Where the Board found that the contracting officer had unreasonably disallowed certain costs in their entirety because of the difficulty of allocability, mainly resulting from subcontract work extending beyond the date of acceptance of the final report for the required research study, but also found that the contract work was timely performed, accepted as satisfactory, and was of considerable benefit to the Government; the Board held, by the jury verdict approach, that appellant was entitled to a portion of its claimed additional costs in the amount of $45,000.

Appeal of Eyring Research Institute, IBCA-1169-10-7
(June 25, 1982) 89 I.D.

Changed Conditions (Differing Site Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81
(Feb. 12, 1982)

Contract Clauses

Where an architect designed a nearly flat roof having a pitch of 4 inches in 20 feet with specifications directing the construction contractor to install the roof in accordance with the manufacturer's installation manual, but the published literature of the manufacturer called for a minumum pitch of 3 inches per foot and contained no provision for installing a roof as designed by the architect, the Board found that leaks in the roof were the result of negligent performance of services on the part of the architect in the design of the building.

Appeal of the Eggers Partnership, IBCA-1299-8-79
(Feb. 12, 1982)

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11,
1982) 89 I.D. 233

Differing Site Conditions (Changed Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81
(Feb. 12, 1982)

In a differing site condition claim under a contract for excavation of a tunnel in the Central Arizona Project where consulting geologists, retained by three different bidders as well as the manufacturer of the tunneling machine, each independently concluded that the geological data furnished by the Bureau of Reclamation indicated there would be sufficient standup time in the top and sides of the tunnel to permit installation of tunnel supports in accordance with the specifications, the Board found a differing site condition existed when the contractor encountered large blocks of rock with no standup time which fell immediately out of the top and sides of the tunnel, interfering with the cutterhead of the tunneling machine and with placement of the precast concrete segments for supporting and lining the tunnel.

In two separate differing site condition claims where the contractor encountered soft invert, which would not support the weight of the tunneling machine, the Board found that a differing site condition existed when the machine encountered a 9-foot layer of clay between two drill holes, neither of which showed a layer of clay, but the Board found there was no differing site condition when the machine encountered very soft rock between two drill holes where only 45 and 50 percent of the core material was recovered from the drill holes and the lack of recovery indicated that soft material, not suitable for coring, was present at the invert level.

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

Subcontractors and Suppliers

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81
(Mar. 16, 1982) 89 I.D. 92

Third Persons

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81
(Mar. 16, 1982) 89 I.D. 92

Waiver and Estoppel

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22,
1982) 89 I.D. 100

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Warranties

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79
(Jan. 29, 1982) 89 I.D. 30

CONTRACT DISPUTES ACT OF 1978

Interest

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79
(Jan. 29, 1982) 89 I.D. 30

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11,
1982) 89 I.D. 233

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81
(Mar. 16, 1982) 89 I.D. 92

DISPUTES AND REMEDIES

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79
(Jan. 29, 1982) 89 I.D. 30

A construction contractor's claim for substantial increases in equitable adjustments allowed by the contracting officer for directed changes is denied where the Board finds that appellant has failed to sustain the burden of proving a causal connection between the costs claimed and the alleged Government actions, and failed to provide reliable cost data to show the Government computations were inadequate compensation for the changed work.

Appeals of Porter Mechanical Contractors, Inc., IBCA-1357-5-80 & IBCA-1366-6-80 (Feb. 1, 1982) 89 I.D. 53

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81
(Feb. 12, 1982)

Where a contractor's conduct and correspondence for a year after delivery of equipment shows acknowledgement of defects which it agrees to repair, a claim for reimbursement for the cost of the repair work is denied where the contractor is unable to prove that the defects did not actually exist.

Appeal of Terra Technology Corp., IBCA-1393-9-80
(Mar. 4, 1982)

Damages

Measurement

Where the Government failed to notify the architect that it had rejected a solution for leaks proposed by the manufacturer of the roof panels and forwarded by the architect, the Government's failure precluded the architect from submitting a proposal for a conventional built-up roof and resulted in unnecessary and avoidable expense when the Government had the roof repaired by another contractor at a higher cost. The architect was entitled to be paid the difference between the cost of the conventional roof and the higher cost which the Government had deducted from payments due the architect.

Appeal of the Eggers Partnership, IBCA-1299-8-79
(Feb. 12, 1982)

Equitable Adjustments

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Convenience

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Termination for Default

Generally

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

FORMATION AND VALIDITY

Cost-type Contracts

Where the Government entered into a sole source, cost-plus-fixed-fee contract with appellant for the purpose of conducting a research and analysis study to determine the toxicity of certain gases emanating from a citrate process used for flue gas desulfurization in the operation of mines, and appellant entered into a subcontract with a University to accomplish the major portion of the required research, the Board found that the Government was not involved in the formation or preparation of the subcontract, and that although they may have intended to enter into a firm, fixed-price contract, the contracting parties did, in fact, by the clear and unambiguous language employed, enter into a cost-reimbursement type contract.

Appeal of Eyring Research Institute, IBCA-1169-10-7 (June 25, 1982) 89 I.D.

Implied and Constructive Contracts

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

PERFORMANCE OR DEFAULT

Acceptance of Performance

Under a fixed-price contract requiring a report in accordance with a statement of work contained in appellant's letter incorporated into the contract, the Board finds the final report was improperly rejected by applying acceptance criteria not contained in the contract.

Appeal of Boston Technologies, Inc., IBCA-1527-10-81 (Mar. 25, 1982)

Breach

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

Waiver and Estoppel

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

CONVEYANCES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to

CONVEYANCES--Continued

GENERALLY--Continued

what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn H. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

DESERT LAND ENTRY

GENERALLY

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

APPLICATIONS

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

LANDS SUBJECT TO

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

ENVIRONMENTAL POLICY ACT

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

ENVIRONMENTAL QUALITY

GENERALLY

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta F. Stroock, 63 IBLA 119 (Apr. 2, 1982)

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

EQUITABLE ADJUDICATION

GENERALLY

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient

ESTOPPEL--Continued

of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

While employees of the Department might be required to either forward or return documents transmitted to the wrong office, no estoppel can arise where the alleged failure to forward or return missent mail was occasioned by the fact that the document was not actually received by the Department.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Madison C. Locke et al., 65 IBLA 122 (June 25, 1982)

EVIDENCE

GENERALLY

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Arvin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney C. Smith, 62 IBLA 379 (Mar. 24, 1982)

EVIDENCE--Continued

GENERALLY--Continued

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so. In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

BURDEN OF PROOF

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Roger A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

There is a legal presumption, which is rebettable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

CREDIBILITY

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Heldman, 65 IBLA 180 (June 29, 1982)

PREPONDERANCE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montaport et al., 63 IBLA 15 (Mar. 30, 1982)

PRESUMPTIONS

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald B. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Jokum, 62 IBLA 27 (Feb. 24, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so. In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thoerson, 65 IBLA 79 (June 23, 1982)

PRIMA FACIE CASE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor D. Montague et al., 63 IBLA 35 (Mar. 30, 1982)

EVIDENCE--Continued

SUFFICIENCY

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in

EVIDENCE--Continued

SUFFICIENCY--Continued

this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

FEDERAL EMPLOYEES AND OFFICERS

AUTHORITY TO BIND GOVERNMENT

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERALLY

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Roger A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Fiitz, 61 IBLA 113 (Jan. 6, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

EXCHANGES

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

INVENTORY AND IDENTIFICATION

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Mangagement determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Amaxco, Inc., et al., 64 IBLA 50 (May 6, 1982)

PERMITS

The provisions of sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1976), do not authorize the issuance of temporary use permits absent an existing right-of-way, or for use as a communications site right-of-way.

Dwight L. Zundel, 62 IBLA 81 (Feb. 25, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Eilts, 61 IBLA 113 (Jan. 6, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Benesuch Mining Corp., et al., 61 IBLA 120 (Jan. 15, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver B. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Divy Divnick, Floyd Virond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Edwin E. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 25, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Kay E. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Earley, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as

required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with *both* the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 129 (Apr. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambrix, 63 IBLA 170 (Apr. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

E. Del & Associates, 65 IBLA 170 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Behney III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Verchota, 64 IBLA 23 (May 6, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so. In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

George Whitehead, 64 IBLA 111 (May 17, 1982)

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 115 (May 19, 1982)

Where the evidence shows that the owner of unpatented mining claims located after Oct. 21, 1976, in calendar year 1979, did file with BLM by Dec. 30, 1980, a copy of the notice of intention to hold the claims which notice was filed also in the local offices of the state wherein the notices of location were filed, the mining claimant has complied with the statutory requirements of the Federal Land Policy and Management Act of 1976.

AZL Resources, Inc., 64 IBLA 126 (May 20, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 24, 1982)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

H. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Raymond L. Dinwiddie, 64 IBLA 334 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting

the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Harry Van Hoosen, 65 IBLA 175 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Heldman, 65 IBLA 180 (June 29, 1982)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Jayne A. McBargue, 61 IBLA 163 (Jan. 25, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther M. Moore, 61 IBLA 391 (Feb. 18, 1982)

Ray B. Krebs, 62 IBLA 85 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Robert S. Ferri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas D. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Bace et al., 63 IBLA 1 (Mar. 25, 1982)

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

James Heldman, 65 IBLA 180 (June 29, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William E. H. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Massie, 64 IBLA 137 (May 20, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1976 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald B. Bannon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajen Minerals, 64 IBLA 261 (June 2, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

James W. Gough, 65 IBLA 59 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel E. Parr, Sr., 65 IBLA 167 (June 29, 1982)

RIGHTS-OF-WAY

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

RULES AND REGULATIONS

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

WILD AND FREE-ROAMING HORSES AND BURROS

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

WILDERNESS

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

While the extent of public support for wilderness preservation is not a proper factor to be considered during the inventory phase of the wilderness review mandated by sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), public comments which relate to the existence or nonexistence of wilderness characteristics within an inventory unit must be evaluated.

While the existence of a realistic possibility that land within an inventory unit possesses wilderness characteristics is sufficient to require that the land be intensively inventoried, such land may be included within a wilderness study area (WSA), only where it is shown that the statutory criteria have, in fact, been met.

Where BLM has refused to designate an area as a wilderness study area (WSA), pursuant to sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), an appellant must not merely show that various errors may have occurred in the consideration of the unit, but is required to show that these errors resulted in an erroneous conclusion as to the unit's suitability for further study.

Sierra Club, 61 IBLA 329 (Feb. 10, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter B. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Mangagement determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976). because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, *i.e.*, rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

E. B. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

FEES

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government

FEES--Continued

and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

GEOTHERMAL LEASES

GENERALLY

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

ACREAGE LIMITATIONS

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

APPLICATIONS

Generally

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

COMPETITIVE LEASES

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of

GEOTHERMAL LEASES--Continued

COMPETITIVE LEASES--Continued

the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

DISCRETION TO LEASE

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

ENVIRONMENTAL PROTECTION

Generally

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

GEOTHERMAL LEASES--Continued

REINSTATEMENT

A late rental payment may be "justifiable" and entitle a geothermal lease, which terminated by operation of law, to reinstatement if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, circumstances are within the control of the lessee where the proximate cause of a late payment was a computer error and not the illness of the individual entrusted with making the payment.

U.S. Geothermal Corp., Earth Power Corp., 61 IBLA 265 (Jan. 29, 1982)

STIPULATIONS

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

GRAZING AND GRAZING LANDS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

GRAZING PERMITS AND LICENSES

GENERALLY

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

ADJUDICATION

Implementation of the Taylor Grazing Act of 1934, *as amended*, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

APPEALS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

APPORTIONMENT OF FEDERAL RANGE

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity of a unit of the Federal range, based on a range survey, will not be disturbed in the absence of positive evidence of error.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

HEARINGS

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 63 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

CLASSIFICATION

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

LANDS SUBJECT TO

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

INDIAN LANDS

CEDED LANDS

Generally

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

LEASES AND PERMITS

Generally

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

Long-term Business/Agriculture

Rentals

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

INDIAN LANDS--Continued

PATENT IN FEE

Jurisdiction

While the Federal trust responsibility over allotted land is extinguished when ownership of the land is acquired by a non-Indian, an erroneous heirship determination involving an interest in trust lands passing to a non-Indian does not prevent correction of Department records when a fee patent has not yet been issued. Departmental regulations enable the Department to correct its records to reflect the factual circumstances of the case and to correct discovery of legal error while the probate of a trust estate is still pending within the Department.

Estate of Bernita Elizabeth Stamp Payton, 9 IBIA 200 (Mar. 22, 1982)

INDIAN PROBATE

ADMINISTRATIVE PROCEDURE (*See also* HEARING, REHEARING--if included in this Index.)

Applicability to Indian Probate

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

ADOPTION (*See also* CHILDREN, ADOPTED--if included in this Index.)

Generally

Proof of adoption in Indian probate proceedings under the jurisdiction of the Department of the Interior is governed by Federal statute as expressed in 25 U.S.C. § 372a (1976).

Estate of Mary Martin Mataem Andrew Cays, 9 IBIA 196 (Mar. 15, 1982)

APPEAL (*See also* PLEADING, RECONSIDERATION--if included in this Index.)

Dismissal

Under 43 CFR 4.320 (1981), service of a copy of a notice of appeal on all interested parties is not a jurisdictional requirement, and an appeal will not be dismissed for failure of service when interested parties have received actual notice of the pendency of the appeal.

Estate of Wilma Florence First Youngman, 10 IBIA 3 (June 4, 1982) 89 I.D.

CHILDREN, ILLEGITIMATE (*See also* INHERITING--if included in this Index.)

Right to Inherit

Acts of Congress Controlling

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

EVIDENCE

Insufficiency of

At a hearing ordered upon a petition for reopening an estate to permit evidence to be taken to rebut an initial determination of heirship, the burden of establishing that the initial order was in error is upon the petitioners. Proof that decedent was survived by a son offered by the mother of the child and supported by a State birth certificate and the judicial admission of decedent that the child was his son was not overcome by statements of other relatives of decedent that decedent had denied paternity and conducted himself as though he were childless.

Estate of Robert M. Morin, 9 IBIA 188 (Mar. 5, 1982)

Where appellant children sought to overturn finding that appellee was a daughter of decedent, which finding was based in part upon a birth certificate showing decedent to be appellee's father and upon testimony of a relative of the mother concerning the circumstances of appellee's birth, the offered testimony of another man that he instead could possibly have been the father, which was vague and uncorroborated by other evidence, was insufficient to support reversal of prior findings concerning heirship.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

The testimony of decedent's wife and legitimate children that they were unaware of the existence of an illegitimate child until after decedent's death was insufficient to support reversal of finding of paternity based in part upon census records and upon the testimony of appellee's mother.

Estate of Harry E. Johnson, 10 IBIA 1 (June 3, 1982)

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

KLAMATH TRIBE

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cassady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

REOPENING

Generally

A petition to reopen an Indian estate and its supporting documentation must, to be favorably considered, present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

Estate of Mary Martin Pataes Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

When reopening is denied by the Administrative Law Judge, a person seeking reopening should offer the evidence that would be presented at an evidentiary hearing to the Board of Indian Appeals which shall then decide, based upon that evidence, whether a sufficient showing was made to mandate reopening.

Reopening is granted for the purpose of preventing a miscarriage of justice based upon a showing that the evidence presented at the original hearing was incorrect, incomplete, or otherwise inadequate.

Estate of Wilma Florence First Youngman, 10 IBIA 3 (June 4, 1982)
89 I.D.

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

STATE LAW

Applicability to Indian Probate, Intestate Estates

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is

INDIAN PROBATE--Continued

STATE LAW--Continued

Applicability to Indian Probate, Intestate Estate--Continued

entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

Applicability to Indian Probate, Testate

The Administrative Law Judge correctly ruled that the determination of the identity of all a decedent's heirs is unnecessary in a case where there is found to be a valid will disposing of the testator's entire estate.

Estate of Frank (Francis) Keahtigh, 9 IBIA 190 (Mar. 9, 1982)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)

Generally

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

Option to Purchase Real Property

An Indian testator may create an option to purchase trust real property by will.

Estate of Thomas Hall, Sr., 10 IBIA 17 (June 28, 1982)
89 I.D.

Testamentary Capacity

Witnesses' Testimony

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since youth and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and directed devises of trust property to each of her surviving children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children ultimately benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable under the circumstances.

Where the witnesses to an Indian will were agency clerks who were acquainted through prior business dealings with decedent and testified they knew her to be the competent manager of a farm composed largely of trust lands which she was instrumental in acquiring through land purchases, exchanges, and leases which she

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity--Continued

Witnesses' Testimony--Continued

arranged, the testimony of a group of treating physicians concerning the effect of two amputations upon decedent's overall health did not tend to contradict the witnesses' testimony that decedent was competent to make a will, nor did the fact that decedent had become an invalid indicate that she lacked competence to make a will.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

WITNESSES

Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed on appeal because he had the opportunity to observe and hear the witnesses.

Estate of Grace Akeen, a.k.a. Grace Akins, 10 IBIA 14 (June 23, 1982)

INDIAN REORGANIZATION ACT

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982)
89 I.D. 132

INDIAN TRIBES

CONSTITUTION, BYLAWS AND ORDINANCES

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982)
89 I.D. 132

INDIAN TRIBES--Continued

ELECTIONS

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982) 89 I.D. 252

FEDERAL RECOGNITION

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

JUDGMENT FUNDS

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

INDIANS

FISCAL AND FINANCIAL AFFAIRS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Oonpovichneh v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

GUARDIANSHIP

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by

INDIANS--Continued

GUARDIANSHIP--Continued

principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs,
9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

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Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

INDIVIDUAL INDIAN MONEY ACCOUNTS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Coosavichbah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179
(Feb. 19, 1982) 89 I.D. 71

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

SOCIAL WELFARE

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

TRUSTS

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs,
9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

LACHES

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Utex Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A *sine qua non* of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

MILLSITES

DETERMINATION OF VALIDITY

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D.

PATENTS

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D.

MINERAL LANDS

GENERALLY

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

MINERAL RESERVATION

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

MINERAL LEASING ACT

GENERALLY

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given

MINERAL LEASING ACT--Continued

GENERALLY--Continued

tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp. et al., 63 IBLA 363 (Apr. 29, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

APPLICABILITY

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

MINERAL LEASING ACT--Continued

COMBINED HYDROCARBON LEASES

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

LANDS SUBJECT TO

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Rachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

MINES AND MINING

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

MINING CLAIMS

GENERALLY

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

MINING CLAIMS--Continued

GENERALLY--Continued

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

ABANDONMENT

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

William P. B. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory B. Harrington, 64 IBLA 331 (June 10, 1982)

Charles F. Hull et al., 65 IBLA 61 (June 23, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Filts, 61 IBLA 113 (Jan. 6, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther M. Moore, 61 IBLA 391 (Feb. 18, 1982)

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Robert S. Ferri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas M. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

James Heldman, 65 IBLA 180 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Reirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim D. Hooper, 62 IBLA 9 (Feb. 23, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. The burden of proof of the intent to abandon rests upon the party who asserts it, and the proof must be clear and convincing. Where the evidence is persuasive that a notice of abandonment mistakenly described the wrong claim, and that the claimant thereafter remained in occupancy and possession for many years, there was neither an intent to abandon nor actual abandonment, and the erroneous notice may be repudiated.

Roy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year

thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald E. Bannon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

E. Del & Associates, 65 IBLA 170 (June 29, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A *sine qua non* of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so. In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern R. Simpson, Jr., 64 IBLA 139 (May 24, 1982)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Stanley Sims, 64 IBLA 257 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajun Minerals, 64 IBLA 261 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned Y. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

If the owner of a mining claim located on or before Oct. 21, 1976, recorded his claim with BLM in 1977, he was required under 43 CFR 3833.2-1(a) to file a copy of evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30, 1978. Because this particular filing is not required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), a decision declaring such a claim abandoned and void for failure to file the required document will be reversed where the owner of the claim complied with the statutory filing requirements and subsequently filed the document required by the regulation.

W. Verne Kight, Eva M. Kight (On Reconsideration), 61 IBLA 216 (Jan. 28, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald B. Atkins, 61 IBLA 364 (Feb. 16, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory W. Harrington, 64 IBLA 331 (June 10, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Douglas M. Overman, 62 IBLA 397 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

The mailing of evidence of annual assessment work after the due date does not constitute compliance with the requirements of the statute.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

COMMON VARIETIES OF MINERALS

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

CONTESTS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

CONTESTS--Continued

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montague et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Eugene Fowler et al., 63 IBLA 388 (Apr. 30, 1982)

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

DETERMINATION OF VALIDITY

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" *does* relate back to the date of the filing of the original notice of location, so that the filer *does* receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, *as amended*, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D.

DISCOVERY

Generally

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met generally where it appears that mineralization on the claim has been physically exposed and evidence shows the mineral deposit is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Where a qualified mineral examiner testifies that he examined and took samples from the only exposed areas on contested mining claims, that his examination and the assay of those samples revealed no mineralization, and that he was of the opinion that a prudent person would not spend time, effort, and money believing he had a reasonable prospect of developing a valuable mine, a prima facie case of invalidity of the claims is established. Where the claimant submits unverified reports of mineralization and testifies that little work and no sampling have been done on the claims since he restaked them, the prima facie showing

is not rebutted, and the claims are properly declared invalid.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Marketability

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Floyd E. Benton, 62 IBLA 283 (Mar. 15, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

LOCATION

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

Where a mining claimant seeks to amend various mining claims, there must be some way to ascertain which claims, in fact, are being amended. Where it is impossible to identify specific claims with specific amendments, the amendment can be of no force or effect.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981,

MINING CLAIMS--Continued

LOCATION--Continued

or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald D. Bannon, 63 IBLA 115 (Apr. 2, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" *does* relate back to the date of the filing of the original notice of location, so that the filer *does* receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

MILLSITES

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

MINING CLAIMS--Continued

PATENT

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

PLACER CLAIMS

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton E. Hale, 62 IBLA 35 (Feb. 24, 1982)

RECORDATION

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William M. M. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver N. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Divy Divnick, Floyd Vipond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald E. Atkins, 61 IBLA 364 (Feb. 16, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Roirdon Coremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Massie, 64 IBLA 137 (May 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kerffer, 62 IBLA 32 (Feb. 24, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Kay B. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Ferri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald D. Bannon, 63 IBLA 115 (Apr. 2, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 129 (Apr. 5, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner, et al., 63 IBLA 146 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambrix, 63 IBLA 170 (Apr. 8, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Fehner III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

Where a mining claimant has been excused from the performance of annual assessment work on claims within a unit of the National Park Service, notice of intention to hold claims must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed under the provisions of sec. 314 of the Federal Land Policy and Management Act of 1976. Depositing a document in the mails does not constitute filing.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Verchota, 64 IBLA 23 (May 6, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

H. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Raymond L. Dinwiddie, 64 IBLA 334 (June 10, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

RELOCATION

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED

Clay

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

SURFACE USES

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

WITHDRAWN LAND

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Denton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor P. Montagert et al., 63 IBLA 35 (Mar. 30, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

MINING CLAIMS RIGHTS RESTORATION ACT

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

MINING OCCUPANCY ACT

GENERALLY

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE

The Mining Claims Occupancy Act, 30 U.S.C. § 701 (1976), only requires that valuable improvements on an unpatented mining claim constitute a principal place of residence for a qualified applicant, not that such be the principal place of residence of the applicant.

Jack J. and LaVonn Curtis, 63 IBLA 306 (Apr. 26, 1982)

MISTAKES

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

NATIONAL PARK SERVICE

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

NOTICE

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Filtz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cocksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Nukala, 64 IBLA 313 (June 10, 1982)

NOTICE--Continued

GENERALLY--Continued

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

NOTICE--Continued

GENERALLY--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting or a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

OIL AND GAS LEASES

GENERALLY

Where the offerors designated on an offer to lease for oil and gas are "McClain Ball and Arthur B. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Ball, Arthur B. Frank, 61 IBLA 202 (Jan. 26, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian B. Pinkley, 63 IBLA 81 (Mar. 30, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

ACQUIRED LANDS LEASES

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Bachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

OIL AND GAS LEASES--Continued

ACREAGE LIMITATIONS

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

APPLICATIONS

Generally

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry R. Weed, 61 IBLA 213 (Jan. 28, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Steacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottilie D. Haas, 61 IBLA 338 (Feb. 10, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William H. Burruss, 62 IBLA 40 (Feb. 24, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack R. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

When land has previously been included in a lease that has terminated, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system under 43 CFR 3112.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert D. Andahl, 62 IBLA 246 (Mar. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Reed, 62 IBLA 391 (Mar. 24, 1982)

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred B. Scasini, 64 IBLA 83 (May 10, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles Y. Neff, 64 IBLA 230 (May 27, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co., et al., 64 IBLA 247 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettigrew, 64 IBLA 336 (June 10, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in *Lola I. Doe*, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

David A. Resce et al., 65 IBLA 12 (June 21, 1982)

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred R. Forster III, 65 IBLA 38 (June 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard B. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Ruether, 65 IBLA 184 (June 29, 1982)

Amendments

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final Departmental decision, but with priority of filing only as of the date the corrective information was filed.

John L. Messinger, James M. Chudnow, 65 IBLA 20 (June 21, 1982)

Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry E. Weed, 61 IBLA 213 (Jan. 28, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack R. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert E. Aadahl, 62 IBLA 246 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred E. Sonsini, 64 IBLA 83 (May 10, 1982)

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Where an oil and gas lease application is filed through a leasing service in the BLM simultaneous filing program bearing a serial number as an ostensible reference to a leasing service's qualifications, and there is no compliance with the requirements set forth

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

in 43 CFR 3102.2-6(b), the application is properly rejected.

Marjorie E. Woodward, 65 IBLA 138 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard F. Shiner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

Description

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Papulak, 63 IBLA 16 (Mar. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Drawings

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur B. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur B. Frank, 61 IBLA 202 (Jan. 26, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Richard M. Sporcic, 62 IBLA 159 (Mar. 8, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

The language in 43 CFR 3112.6-1(c)(4), which prohibits separate filings by a trustee on behalf of two or more beneficiaries on the same parcel, is a per se prohibition and means that a trustee for two or more discrete trusts may file application on behalf of only one trust for any one parcel.

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents to the sibling survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease applications by more than one such trust for the same parcel is therefore violative of 43 CFR 3112.6-1(c), which prohibits the filing of multiple offers.

Bruce A. Blakemore Estate Trust and James R. Blakemore Trust, 62 IBLA 336 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where individuals who are officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, and where the corporation has filed no applications, cancellation by BLM of leases awarded to such individuals pursuant to those drawings is improper when the individuals establish that there was no breach of their fiduciary duty to the corporation creating a corporate interest in the individual applications.

Where individual officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, but the corporation has not filed any applications, rejection of the applications by BLM is improper when the individuals establish that there was corporate authorization for such individual filings; that any prior assignments to the corporation of Federal oil and gas leases previously acquired through the simultaneous system were motivated by personal financial and business considerations, rather than by corporate obligation; and that no arrangement, agreement, scheme, or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

plan giving the corporation an interest in any of the applications ever existed.

Lawrence C. Harris et al., 63 IBLA 132 (Apr. 5, 1982)
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An applicant for a simultaneously filed oil and gas lease is bound to conform to changes in application procedures duly promulgated by publication in the *Federal Register* and referred to in appropriate notices prior to the filing; and the fact that numerous applications were required to be returned to the applicant and to others because they were on the wrong form does not render the drawing invalid as to the remaining applicants.

Ronald C. Agel, 64 IBLA 1 (May 3, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 24, 1982)

Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlin D. Hass, 61 IBLA 338 (Feb. 10, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William H. Burruss, 62 IBLA 40 (Feb. 24, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert R. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Pinkley, 63 IBLA 81 (Mar. 30, 1982)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sonsini, 64 IBLA 83 (May 10, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard B. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

640-acre Limitation

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Where a noncompetitive offer to lease covers more than 640 acres of land available for leasing at the time the offer is made, the offeror has complied with 43 CFR 3110.1-3(a), even though some of the land becomes unavailable for noncompetitive leasing before lease issuance and the remaining land involves less than 640 acres.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

No over-the-counter offer for a noncompetitive oil and gas lease on the public domain may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation (or that such plan has been approved as to form by the Director, Geological Survey), or where the land is surrounded by lands not available for leasing; where these circumstances do not exist, an offer for less than 640 acres is properly rejected.

James M. Chudnow, 65 IBLA 64 (June 23, 1982)

Sole Party in Interest

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement signed by himself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Richard M. Szorcic, 62 IBLA 159 (Mar. 8, 1982)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Diane M. Berndt, Richard W. Myers, 62 IBLA 206 (Mar. 16, 1982)

Bob Reid, 64 IBLA 17 (May 4, 1982)

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee to hold Federal oil and gas leases or lack of sufficient bond. However, the failure to submit three manually executed assignment forms as required by 43 CFR 3106.2-2, is a curable defect.

North Central Oil Corp., 62 IBLA 38 (Feb. 24, 1982)

Where a proposed assignment has been filed with BLM but has not yet been approved, the original lessee of an oil and gas lease is the holder of record.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

A unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. Longstanding Departmental policy requires withholding action to either approve or reject the assignment until the dispute between the parties is resolved through agreement or litigation.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

BONA FIDE PURCHASER

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A bona fide purchaser must have acquired his interest in an oil and gas lease in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent man on inquiry which if followed with reasonable diligence would lead to discovery of defects in title or equitable rights of others affecting the lease.

The knowledge of the assignee's agent and/or employee acting for the principal in connection with obtaining the lease is generally attributable to the assignee in determining whether the assignee qualifies as a bona fide purchaser.

Payment of valuable consideration prior to knowledge or notice of a superior right is a necessary element of bona fide purchaser status.

Richard W. Eckels, 62 IBLA 1 (Feb. 22, 1982)

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. M. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

Robert F. Myers, 63 IBLA 100 (Mar. 31, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there was no formal protest against the lease pending, provided that the purchaser of the lease pending had no actual knowledge of any defect in the underlying offer.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

The protection afforded a bona fide purchaser of an oil and gas lease applies only where consideration has been paid. An unperformed obligation to pay the assignor is not generally sufficient value. Receipt by the purchaser of notice that a lease is subject to cancellation prior to payment of the obligation to the assignor which the purchaser has assumed will bar bona fide purchaser status even if the assignee thereafter pays the obligation.

Richard W. Eckels (On Reconsideration), 65 IBLA 76 (June 23, 1982)

OIL AND GAS LEASES--Continued

CANCELLATION

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Couper, 64 IBLA 146 (May 24, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

COMPENSATORY ROYALTY

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

COMPETITIVE LEASES

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982)
89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Bachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

DESCRIPTION OF LAND

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Papulak, 63 IBLA 16 (Mar. 26, 1982)

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed because no change has been made in the land actually covered by the lease.

Max A. Frey et al., 65 IBLA 192 (June 29, 1982)

DISCOVERY

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

DISCRETION TO LEASE

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Under sec. 17 of the Mineral Leasing Act of 1920, *as amended*, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta P. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

James M. Chudnow, 63 IBLA 309 (Apr. 27, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has consolidated its holdings in order to manage the lands for recreational, scenic, and wildlife values, which BLM determines oil and gas leasing would damage, rejection of the lease offer will be affirmed.

Connie Hull, 63 IBLA 317 (Apr. 27, 1982)

Great White, Inc., 65 IBLA 207 (June 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettigrew, 64 IBLA 336 (June 10, 1982)

OIL AND GAS LEASES--Continued

DRAINAGE

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

DRILLING

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

EXTENSIONS

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of

EXTENSIONS--Continued

fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

FIRST-QUALIFIED APPLICANT

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

FIRST-QUALIFIED APPLICANT--Continued

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Deemer, 63 IBLA 217 (Apr. 13, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Eirindel Investment Research, 65 IBLA 111 (June 28, 1982)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES

Where the Government owns a 50 percent mineral interest in certain acquired lands and subsequently obtains the remaining 50 percent mineral interest in those lands at a time in which the original interest is not under lease, the Government may not thereafter issue a fractional interest lease for these lands.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

KNOWN GEOLOGIC STRUCTURE

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure (KGS) of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. Where appellant provides technical data to support his contention and the record contains only a conclusory determination that the land is within a KGS, the Board may call for further substantiation of the basis for the KGS finding in light of appellant's data.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A noncompetitive oil and gas lease application must be rejected where at any time prior to the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Lida R. Crumbeller, 63 IBLA 290 (Apr. 22, 1982)

LANDS SUBJECT TO

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The fact that oil and gas leases may have been wrongly issued in the past for lands which were not available for leasing does not militate in favor of reenacting the wrong for the sake of consistency or to avoid discriminatory treatment of a subsequent offeror.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

W. E. Haley, 62 IBLA 294 (Mar. 16, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Rood, 62 IBLA 391 (Mar. 24, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James R. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Courey, 64 IBLA 146 (May 24, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette L. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havoco of America, Ltd., 63 IBLA 204 (Apr. 22, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Coupey, 64 IBLA 146 (May 24, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

OVERRIDING ROYALTIES

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell

OIL AND GAS LEASES--Continued

OVERRIDING ROYALTIES--Continued

such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Erwin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 274 (June 4, 1982)

PRODUCTION

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

REINSTATEMENT

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas B. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James B. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

inadvertent misplacement of office records during the changeover in his office location.

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

The Secretary is without authority under existing law to reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due unless such rental is paid or tendered within 20 days thereafter.

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1976) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226(e) (1976) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 64 IBLA 119 (May 19, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Emerson L. Russ, 64 IBLA 121 (May 19, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

J. W. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due or by a delay in receiving assignment forms which prevented

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

shifting the responsibility for lease payment prior to the anniversary date.

Almanex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

Jack J. Grynberg, 64 IBLA 354 (June 15, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

OIL AND GAS LEASES--Continued

RELINQUISHMENTS

Where a lessee relinquishes an oil and gas lease, he is exercising a right given to him by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. P. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

RENTALS

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Thomas D. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James E. Chudnow, Laurent A. Giessert, 62 IBLA 19 (Feb. 24, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Romola A. Jarett, 63 IBLA 228 (Apr. 16, 1982)
89 I.D. 207

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliosbeis, 64 IBLA 119 (May 19, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Alminex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

RIGHTS-OF-WAY LEASES

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 310 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 324 (Mar. 24, 1982)

OIL AND GAS LEASES--Continued

STIPULATIONS

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta F. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havoco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

SUSPENSIONS

The applicable statute, 30 U.S.C. § 184(j) (1976), and regulation, 43 CFR 3108.3(e), authorize the granting of a suspension of lease term and obligation to pay rental where, during a proceeding described therein, a party files with the Secretary a waiver of his rights under the lease, including particularly, where applicable, rights to drill and to assign.

Michigan Wisconsin Pipeline Co., et al., 64 IBLA 247 (May 28, 1982)

TERMINATION

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James M. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days after the anniversary date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State office on or before the anniversary date.

J. W. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was

OIL AND GAS LEASES--Continued

TERMINATION--Continued

either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Alpinex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

UNIT AND COOPERATIVE AGREEMENTS

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

OIL SHALE

WITHDRAWALS

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

TIMBER SALES

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.C.T.S., 61 IBLA 166 (Jan. 25, 1982)

PATENTS OF PUBLIC LANDS

GENERALLY

A decision holding that title to a tract of land has reverted to the United States will be affirmed where the land together with its improvements was patented to a municipality to be used only for school or other public purposes subject to reversion if the Secretary of the Interior finds the grantee has violated the conditions for a period of 1 year and where the record discloses that grantee has removed the school structures thereon and failed to use the land for 15 years thereafter.

City of Cordova, 62 IBLA 198 (Mar. 9, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn E. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald R. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

RESERVATIONS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 107 (Mar. 9, 1982)

PATENTS

GENERALLY

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Marie C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

POWERSITE LANDS

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James B. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right of reentry provided the United States by sec. 24 of the Federal Power Act, *as amended*.

Monica Stevens, 64 IBLA 69 (May 10, 1982)

PUBLIC LANDS

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard S. Tingley, 62 IBLA 315 (Mar. 19, 1982)

PUBLIC LANDS--Continued

SPECIAL USE PERMITS

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

PUBLIC RECORDS

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

PUBLIC SALES

APPLICATIONS

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

PUBLIC SALES--Continued

SALES UNDER SPECIAL STATUTES

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

REGULATIONS

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Filtz, 61 IBLA 113 (Jan. 6, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl B. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola B. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record

REGULATIONS--Continued

GENERALLY--Continued

affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

The Board is bound by duly promulated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the *Federal Register* or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D.

APPLICABILITY

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

BINDING ON THE SECRETARY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Once a regulation is adopted by the Department, and so long as it remains extant, the Secretary and his representatives are bound by it and it has the force and effect of law.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

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REGULATIONS--Continued

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

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Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

INTERPRETATION

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lano Lasrich, 63 IBLA 192 (Apr. 8, 1982)

REINSTATEMENT

GENERALLY

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

RES JUDICATA

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

RIGHTS-OF-WAY

GENERALLY

Where a subdivision builder is granted a right-of-way for an access road and bridge pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), with the understanding that a county or town will take over the right-of-way, but an assignment to the county or town has not been approved by BLM, the builder is liable for the rental, and the exemption from payment of rental for a local government under 43 CFR 2803.1-2(c)(1) does not apply.

Carpentry Unlimited, Inc., 62 IBLA 203 (Mar. 9, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 15, 1901

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Melbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

ACT OF MARCH 4, 1911

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

APPLICATIONS

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Melbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

CANCELLATION

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

RIGHTS-OF-WAY--Continued

CANCELLATION--Continued

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald B. Clark, 65 IBLA 144 (June 29, 1982)

CONDITIONS AND LIMITATIONS

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

FEDERAL HIGHWAY ACT

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

An application by a state highway department for a material site right-of-way on public land is properly denied where the applicant fails to demonstrate that the material is reasonably necessary for the construction or maintenance of a highway or where such disposition would not be consistent with other public purposes as determined by the Bureau of Land Management. Where the application is denied on the basis of a determination that it would preempt the public's only available source of cinders within 40 miles and appellant contradicts this by identifying other public sources, the decision rejecting the application will be set aside and the case remanded for further consideration of alternatives that would meet the needs of the applicant without sacrificing other public purposes.

Utah Dept. of Transportation, 62 IBLA 176 (Mar. 8, 1982)

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc.,
63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

RULES OF PRACTICE

GENERALLY

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Estate of Isidor Deemar, 63 IBLA 217 (Apr. 13, 1982)

APPEALS

Generally

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Ray, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

Ervin E. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 282

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 8 OHA 257 (Apr. 9, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

Dismissal

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 300 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

E. W. Dodds, 62 IBLA 261 (Mar. 11, 1982)

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Bar Bar, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

Effect of

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

Failure to Appeal

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison L. Locke et al., 65 IBLA 122 (June 25, 1982)

Motions

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982).
89 I.D. 233

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982)
89 I.D.

Notice of Appeal

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

E. A. Colson, 63 IBLA 221 (Apr. 15, 1982)

Reconsideration

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982) 89 I.D.

Standing to Appeal

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982) 89 I.D. 67

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal Y. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Statement of Reasons

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal Y. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

Timely Filing

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982) 89 I.D. 208

GOVERNMENT CONTESTS

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record,

RULES OF PRACTICE--Continued

HEARINGS--Continued

and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

RULES OF PRACTICE--Continued

HEARINGS--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

PROTESTS

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

SECRETARY OF THE INTERIOR

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and

SECRETARY OF THE INTERIOR--Continued

the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

SEGREGATION

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation

SEGREGATION--Continued

which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

SODIUM LEASES AND PERMITS

LEASES

Sodium leases, which have a determinate 20-year primary term, are not automatically extended or renewed. The Secretary may renew the lease upon the lessee's timely application for renewal.

The lessee's preference right at the time of renewal under sec. 24 of the Mineral Lands Leasing Act is only to be preferred above other applicants and is not an entitlement, as against the United States, to a renewal lease.

In adjudicating an application for renewal of a sodium lease, the Secretary retains his discretion respecting whether or not to lease. That discretion is limited in that if the decision is made to lease, a preference is extended to the existing lessee who has made timely application.

Existing sodium leases which are beyond their primary term but for which the lessee has made timely application for renewal are continued in force by the provisions of sec. 9 of the Administrative Procedure Act so long as it takes the Department to adjudicate the application.

Sodium Lease Renewals, M-36943 (Mar. 18, 1982)
89 I.D. 173

SPECIAL USE PERMITS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

STATE LAWS

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

STATUTES

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Rooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Sligco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl B. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Nykala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Reirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

STATUTES--Continued

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

STATUTORY CONSTRUCTION

GENERALLY

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

IMPLIED REPEALS

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

STOCK-RAISING HOMESTEADS

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

SUBMERGED LANDS

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

ABATEMENT

Generally

Where the record evidence does not support a finding that the recipient of a notice of violation requested an extension of time to abate a violation charged in the notice, prior to OSM's issuance of a cessation order for failure to abate the violation within the time prescribed for abatement, OSM's cessation order is properly upheld against the recipient's claim that conditions at the mine site warranted an extension of the abatement time.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

ADMINISTRATIVE PROCEDURE

Intervention

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding,

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

ADMINISTRATIVE PROCEDURE--Continued

Intervention--Continued

denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D.

APPEALS

Generally

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D.

APPLICABILITY

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D.

CIVIL PENALTIES

Amount

Under 30 CFR 723.15(b), OSM is required to assess a civil penalty of not less than $750 per day for each day during which a cessation order properly remains outstanding, up to a limit of 30 days.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

HYDROLOGIC SYSTEM PROTECTION

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

ROADS

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

The exemption from regulation provided by the exclusionary language in the definition of "roads" in 30 CFR 710.5 is for the benefit of governmental entities.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D.

STEEP-SLOPE MINING

Generally

The special performance standards set forth in 30 CFR 716.2 do not pertain to a mining operation subject to regulation as a mountaintop removal operation in accordance with the provisions of 30 CFR 716.3.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D.

SUSPENSION OR REVOCATION OF PERMITS

Generally

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding,

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

SUSPENSION OR REVOCATION OF PERMITS--Continued

Generally--Continued

denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D.

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Disco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982) 89 I.D. 113

VARIANCES AND EXEMPTIONS

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

Entitlement to an exemption from regulation must be asserted and proven by the one claiming the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D.

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Sedimentation Ponds

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

WORDS AND PHRASES

"*Surface coal mining operations*." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Disco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982) 89 I.D. 113

"*Roads maintained with public funds*." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D.

SURVEYS OF PUBLIC LANDS

GENERALLY

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed because no change has been made in the land actually covered by the lease.

Ray A. Frey et al., 65 IBLA 192 (June 29, 1982)

TAR SANDS

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not

TAR SANDS--Continued

required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

TIMBER SALES AND DISPOSALS

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

Diana Coogle et al., 61 IBLA 393 (Feb. 22, 1982)

A.C.O.T.S., 61 IBLA 396 (Feb. 22, 1982)

A.C.O.T.S., 62 IBLA 43 (Feb. 24, 1982)

Alan Winter et al., 62 IBLA 299 (Mar. 18, 1982)

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Robert M. Barker, 62 IBLA 331 (Mar. 23, 1982)

TOWNSITES

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

TRESPASS

GENERALLY

A notice to cease trespass and an order to remove improvements from public lands may properly issue where appellant has been occupying public lands without authorization or claim or color of title.

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

ADMINISTRATIVE REVIEW AND APPEALS

The price for which real property is acquired and the right, if any, of the grantor of such property to salvage of real property improvements on the land are matters determinable by agreement between the owners of the property and the acquiring agency, or by condemnation proceedings, and they are not reviewable upon appeal to this Office.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Expenses Incidental to Transfer of Title to the United States

Expenses incidental to transfer of title to the United States, reimbursable under § 303 of the Act and implementing regulations, do not include costs incurred by the grantors of the acquired property for title investigation work to satisfy objections to the title and hasten issuance of title insurance to the United States.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John R. Larsen & Mr. and Mrs. Louis F. Larsen, 4 OHA 272 (Apr. 16, 1982)

UNIFORM RELOCATION ASSISTANCE

Generally

Where the claim for additional moving and related costs was filed after the time limitation prescribed by Departmental regulations implementing the Relocation Act, and the record as a whole does not justify an extension of time for filing an additional claim, the claim is properly denied.

Uniform Relocation Assistance Appeal of E. Ray Sinclair, 4 OHA 216 (Jan. 4, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Generally--Continued

Where judgment required the claimant to remove certain fixtures to the real property, to which claimant had retained removal rights, and claimant failed to remove such property within the required time, such removal rights are properly treated as abandoned and the property remains in the United States.

Uniform Relocation Assistance Appeal of D. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where claimant began occupancy of the acquired property after the acquisition by the Government had been completed, his subsequent move from the property is not as a result of the acquisition by the Government; hence claimant is not a displaced person, and is not eligible for benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and B. Roche-Andresen, 4 OHA 252
(Mar. 31, 1982)

Moving and Related Expenses

Generally

Reimbursement is not allowable for costs of moving structures or other improvements in which the displaced person reserved ownership rights.

Where claim includes request for payment of moving expense that is not adequately substantiated by supporting data, the acquiring agency requests additional supporting data, and such additional data are not supplied within a reasonable time, the claim for such expenses is properly denied.

Uniform Relocation Assistance Appeal of D. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where the record on appeal establishes that claimant failed to remove signboards from property acquired by the Park Service after several notices, and Park Service thereafter properly removed signs as abandoned property, payment of benefits in an amount equal to the actual reasonable expense required to relocate such signs was proper under sec. 202 of the Act and implementing Departmental regulations.

Uniform Relocation Assistance Appeal of Rick Outdoor Advertising Co., 4 OHA 234 (Feb. 5, 1982)

Where claimant has not established his claim with sufficient evidence, and where decision of the Bureau official below is supported by the record, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and B. Roche-Andresen, 4 OHA 252
(Mar. 31, 1982)

Where the record evidence shows the claimant has not established his entitlement to payment for reasonable moving and related expenses in an amount greater than that authorized by the Fish and Wildlife Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Richard P. Catto, 4 OHA 278 (June 1, 1982)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

A claim for a fixed payment under § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, is properly disallowed where the claimant fails to establish that the business cannot be relocated without a substantial loss of its existing patronage.

Uniform Relocation Assistance Appeal of John E. Friel, Esq., 4 OHA 244 (Mar. 8, 1982)

Replacement Housing Payment for Homeowners

Generally

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits an adjusted price rather than the list price of the dwelling found by the Park Service to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James D. Cahill, 4 OHA 229 (Jan. 29, 1982)

Where the record shows the claimants have received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act and the Department's implementing regulations, the determination appealed from will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Dan J. Biro, 4 OHA 240 (Feb. 16, 1982)

A determination disallowing a claim for replacement housing differential costs under sec. 203(a)(1)(A) of the Act will be affirmed where the evidence shows a comparable replacement dwelling which was decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, could have been purchased at the time of the claimants' displacement for less than the purchase price of the Government-acquired dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James P. Donahue, 5 OHA 1 (June 18, 1982)

WILD AND SCENIC RIVERS ACT

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 17 1982)

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

WILD FREE-ROAMING HORSES AND BURROS ACT

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

WILDERNESS ACT

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

WILDERNESS ACT--Continued

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied

for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter B. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, *i.e.*, rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

E. E. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand

WILDERNESS ACT--Continued

assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

WILDLIFE REFUGES AND PROJECTS

GENERALLY

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

WILDLIFE REFUGES AND PROJECTS--Continued

LEASES AND PERMITS

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

EFFECT OF

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

POWERSITES

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, *as amended*.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

WORDS AND PHRASES

"*Bona fide purchaser*." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

WORDS AND PHRASES--Continued

David A. Reese et al., 65 IBLA 12 (June 21, 1982)

"*Roadless*." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

"*Public lands*." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

"*Date of location*." Although 43 CFR 3833.0-5(b) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

"*Public lands*." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

"*Good faith*." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willmorth, 64 IBLA 159 (May 25, 1982)

WORDS AND PHRASES--Continued

"*Leasing*." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

"*Smallest legal subdivision*." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

"*Pending*." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior -- James G. Watt

Office of Hearings and Appeals -- James A. Limb, Director

Office of the Solicitor -- William H. Coldiron, Solicitor

INDEX-DIGEST

JANUARY-SEPTEMBER 1982

This index-digest covers all published and important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through September 30, 1982, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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SYMBOLS

ANCAB - Alaska Native Claims Appeals Board
IA-T - Indian Appeals--Tort
IBCA - Interior Board of Contract Appeals
IBIA - Interior Board of Indian Appeals
IBLA - Interior Board of Land Appeals
IBSMA - Interior Board of Surface Mining Appeals
M - Solicitor's Opinion
OHA - Office of Hearings and Appeals
SEC - Office of the Secretary

ACCOUNTS

FEES AND COMMISSIONS

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

PAYMENTS

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

REFUNDS

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Romola A. Jarett, 63 IBLA 228 (Apr. 16, 1982)
89 I.D. 207

ACCRETION

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph E. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

ACQUIRED LANDS

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lovell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

ACT OF JULY 26, 1866

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

ACT OF FEBRUARY 8, 1887--Continued

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

ACT OF MARCH 3, 1891

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

ACT OF SEPTEMBER 19, 1914

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

ACT OF NOVEMBER 9, 1921

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

ACT OF MAY 21, 1930

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

ACT OF APRIL 23, 1932

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

ACT OF AUGUST 28, 1937

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

ACT OF AUGUST 11, 1955

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void at initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

ACT OF MARCH 6, 1958

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Gary Lester Gray, Grace Marie Rayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

ACT OF SEPTEMBER 26, 1961

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

ACT OF SEPTEMBER 19, 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

ACT OF OCTOBER 8, 1964

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

ACT OF DECEMBER 24, 1970

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

ACT OF SEPTEMBER 28, 1976

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

ACT OF APRIL 3, 1980

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 *et seq.* (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

National Forest lands are not "available public... lands." As such, they are not intended by Congress to be included within the Paiute's proposed reservation enlargement plan under the Paiute Restoration Act.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982)
89 I.D. 403

ADMINISTRATIVE AUTHORITY

GENERALLY

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient

ADMINISTRATIVE AUTHORITY--Continued

LACHES--Continued

of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

ADMINISTRATIVE PRACTICE

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

ADMINISTRATIVE PRACTICE--Continued

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

ADMINISTRATIVE PROCEDURE

GENERALLY

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

ADJUDICATION

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William M. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

ADMINISTRATIVE LAW JUDGES

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES--Continued

might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

ADMINISTRATIVE PROCEDURE ACT

Sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), does not require that the policy and procedures of the Wilderness Inventory Handbook be promulgated as rules and regulations pursuant to sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553 (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

ADMINISTRATIVE REVIEW

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

BURDEN OF PROOF

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold I. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Rolling Contractors, 4 IBSMA 156 (Sept. 21, 1982) 89 I.D.

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

DECISIONS

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

HEARINGS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William P. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

SUBSTANTIAL EVIDENCE

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

ALASKA

HOMESITES

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

LAND GRANTS AND SELECTIONS

Generally

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

NATIVE ALLOTMENTS

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected without finality, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(d) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsec. (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended.

Wayne C. Williams (On Reconsideration), 61 IBLA 161 (Jan. 26, 1982)

David E. Stevens, 64 IBLA 72 (May 10, 1982)

Where the State Office rejects a Native allotment application because it was deficient in form and untimely filed and the applicant argues that he timely and properly filed the application, and where the factual record does not clearly support either view, the case will be remanded for a hearing.

Charlie B. Biederman, 61 IBLA 189 (Jan. 26, 1982)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

require an applicant for a Native allotment to complete 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the commencement of use and occupancy or the filing of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittant use.

Andrew Gordon McKinley, Annie Bennett (On Reconsideration), 61 IBLA 282 (Feb. 2, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(a)(5)(A), (B), and (C) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that paragraph (1) of this subsection and subsec. (d) shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the 180th day following the effective date of this Act the State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. However, where the State's protest describes land which is clearly different from the land claimed by the Native applicant, the Board will instruct BLM to grant the allotment, provided all else is regular.

United States v. Mary S. Nanouk, 61 IBLA 316 (Feb. 8, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Steven Bergman (On Reconsideration), 61 IBLA 399 (Feb. 22, 1982)

Heirs of Macauley Alakayak (On Reconsideration), 62 IBLA 90 (Feb. 25, 1982)

Heirs of Pete Olson, 63 IBLA 64 (Mar. 30, 1982)

Nina Harris, 63 IBLA 74 (Mar. 30, 1982)

Heirs of Madrona Wassillie (On Reconsideration), 64 IBLA 167 (May 25, 1982)

Elsie Bergman (On Reconsideration), 64 IBLA 180 (May 26,1982)

John A. Paine, 66 IBLA 77 (July 29, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, inter alia, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

The Department of the Interior is authorized to approve only Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that she had delivered her application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

Where conflicting evidence contained in a file raises factual issues, BLM should initiate a Government contest so that the factual issues can be resolved at a hearing.

Nora L. Sanford (On Reconsideration), 63 IBLA 335 (Apr. 28, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970) (repealed 1971).

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided thw United States by sec. 24 of the Federal Power Act, *as amended*.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

Where a Native allotment application has been rejected for failure to provide adequate evidence of use and occupancy, the case will be remanded to BLM to be held for approval pursuant to sec. 905(a) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2435 (1980), subject to the restrictions of sec. 905(d) on allotments of land withdrawn or classified for powersite purposes, in the absence of the filing of a protest prior to the 180th day following the effective date of the Act.

Myrtle Jaycox, Serafina Anelon, Hilma C. Eakon (On Reconsideration), 64 IBLA 97 (May 17, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

Emily B. Hunt (On Reconsideration), 64 IBLA 304 (June 8, 1982)

Where an application for an allotment describes specific land for which an allotment is sought, but on which land the applicant cannot show the requisite use and occupancy, the death of the allotment applicant terminates all right of reselection by the applicant, and his heirs or his estate may not seek to amend the land description to embrace other land.

"Pending." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

A Native allotment application for withdrawn lands may be granted when the applicant has commenced the required use and occupancy prior to the withdrawal, if all other requirements have been met. The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for herself, and not as a dependent child visiting and using the land in the company of her parents. Native allotment applicant's minority on the date the land was withdrawn does not automatically disqualify the applicant from being able to show independent use and occupancy of the land and applicant should be afforded notice and opportunity for a hearing to prove the adequacy and independence of her use and occupancy.

Catherine Angaiak (On Reconsideration), 65 IBLA 317 (July 15, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), where the land is included in a State selection application filed by Dec. 18, 1971, and is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William M. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Termination after Dec. 18, 1971, of an otherwise acceptable allotment application filed before that date for failure to submit evidence of use and occupancy does not bar approval of the application under that provision. Where such an application was pending on Dec. 18, 1971, and BLM has refused to reinstate and approve the application, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act.

Frederick Howard, 67 IBLA 157 (Sept. 20, 1982)

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Doyon, Ltd., and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

OIL AND GAS LEASES

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

STATEHOOD ACT

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William E. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

ALASKA--Continued

STATEHOOD ACT--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

TOWNSITES

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie H. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

ALASKA--Continued

TRADE AND MANUFACTURING SITES

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

The use and improvement of land in a trade and manufacturing site for the pasturing of horses, the placement of advertising signs for off-site businesses, or the presence of roads which merely cross the land to give access to other property, cannot serve to qualify the claimant to receive title to the site, as all those uses are controlled by other provisions of law and regulation, and are not cognizable as the conduct of "trade, manufacture, or other productive industry" on the site.

Where the claimant to a trade and manufacturing site, which was located for the benefit of businesses being conducted on her husband's adjacent unpatented homestead, relinquishes approximately half the land and the primary improvements on the site so that those lands may be included in the survey of the homestead, her trade and manufacturing site purchase application must be rejected if the remaining lands are not actually occupied by improvements and used and needed in the prosecution of the businesses.

One who is not the owner of the business enterprise which is to be served by activities conducted on a trade and manufacturing site is not a qualified claimant of the site.

United States v. Evelyn H. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

GENERALLY

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, *inter alia*, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

GENERALLY--Continued

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982)
89 I.D. 303

ADMINISTRATIVE PROCEDURE

Generally

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, *as amended*, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

43 CFR 4.913(b) provides:

> Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

Conveyances

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in *Appeals of State of Alaska and Seldovia Native Ass'n, Inc.*, 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982)
89 I.D. 346

Decision to Issue Conveyance

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Where in a decision to issue conveyance the Bureau of Land Management lists certain water bodies and

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decision to Issue Conveyance--Continued

declares them to be the only water bodies within the conveyance area which are considered to be navigable, there is no requirement in ANCSA or its implementing regulations that the BLM list those water bodies, if any, which were determined to be nonnavigable and the beds of which are to be conveyed to the grantee corporation(s) and charged against its entitlement.

The Bureau of Land Management is not required to include in a decision to issue conveyance a written statement of reasons for its navigability determinations, if any.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982) 89 I.D. 346

Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

ALASKA NATIVE CLAIMS APPEAL BOARD

Appeals

Generally

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Decisions

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Dismissal

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board fails to timely respond to an order of the Board requiring that the appellant file notice as to whether it intends to pursue its appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 264 (Jan. 15, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain no issues to be resolved by the Board.

Clara Helgason, 6 ANCAB 267 (Jan. 15, 1982)

An appeal will be dismissed when the decision appealed from is amended pursuant to Board order based upon a stipulation entered into by the parties and a timely appeal has not been taken from the published amended decision.

Knik, Inc., 6 ANCAB 304 (Jan. 27, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Northway Natives, Inc., 6 ANCAB 338 (Jan. 29, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

State of Alaska, 7 ANCAB 1 (Mar. 8, 1982)

E. Gregory Mead, 7 ANCAB 42 (Apr. 9, 1982)

State of Alaska, Dept. of Transportation & Public Facilities, 7 ANCAB 92 (June 10, 1982)

Danzhit Hanlaii Corp., 7 ANCAB 94 (June 10, 1982)

Doyon, Ltd., 7 ANCAB 96 (June 10, 1982)

State of Alaska, 7 ANCAB 98 (June 10, 1982)

State of Alaska, 7 ANCAB 100 (June 10, 1982)

State of Alaska, 7 ANCAB 102 (June 10, 1982)

Ingalik, Inc., 7 ANCAB 104 (June 14, 1982)

An appeal will be dismissed when the appellant fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Matanuska-Susitna Borough, 7 ANCAB 4 (Mar. 24, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board is in agreement with a motion to dismiss filed by another party to the appeal.

Matanuska-Susitna Borough, 7 ANCAB 89 (May 20, 1982)

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed on jurisdictional grounds, the Board will dismiss the appeal.

William F. Straub, 7 ANCAB 184 (June 23, 1982)

Helge A. Boquist, 7 ANCAB 186 (June 23, 1982)

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed and when the motion for dismissal asserts as a basis therefore appropriate provisions of 43 CFR 4.900 et seq., the Board will dismiss the appeal.

Chickaloon Moose Creek Native Ass'n, Inc., 7 ANCAB 200 (June 24, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

Absent reasons justifying continuance of the appeal as to a specific issue therein, the issue will be dismissed when resolved by settlement stipulation approved by the Alaska Native Claims Appeal Board.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Terry, 7 ANCAB 206 (June 25, 1982)

Jurisdiction

The Board is without jurisdiction to adjudicate the validity of a Native allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

Where the present appeal is Tetlin's first opportunity to challenge BLM's delineation of the land to which they are entitled under ANCSA, their appeal directly addresses a land selection matter within the meaning of 43 CFR 4.1(b)(5) and the appeal is within the Board's jurisdiction.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Parties

The State of Alaska's motion to intervene will not be granted where the granting of such motion would permit the State to pursue, as an appellant, issues which the State failed to appeal timely and which the appellant has been denied standing to raise.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Remand

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Remand--Continued

rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Settlement Approval

43 CFR 4.913(b) provides:

> Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Terry, 7 ANCAB 206 (June 25, 1982)

Standing

The test for standing to appeal a decision under 43 CFR 4.902 requires, in part, that the appellant claim a property interest within the meaning of the regulation. To appeal a § 17(b)(1) public easement decision this portion of the standing requirement is satisfied when the appellant's property interest consists of a § 14(g) valid existing right to which the conveyance of lands under ANCSA is subject.

An appellant claiming standing to appeal a § 17(b)(1) public easement decision must not only claim to have a property interest, but in order to meet the standing test of 43 CFR 4.902, must further assert that the appealed decision affects that property interest by failing to provide the appellant and the public with access to public lands.

Ray DeVilbiss (Wolverine Grazers Ass'n), 6 ANCAB 290 (Jan. 27, 1982) 89 I.D. 9

The appropriate test of standing to appeal a decision to this Board is not whether a person is an aggrieved party, but whether a person claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed.

In response to arguments that the test of whether a person is aggrieved should be applied because it is consistent with judicial requirements for standing, the Board must find itself bound by its own regulations for standing, which require a claim of property interest.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

The mere allegation of ownership and use of State and Federal lands as a member of the public does not constitute a claim of property interest in land as is required for standing under regulations in 43 CFR 4.902.

A fee simple ownership interest in a fishing lodge is clearly the type of property interest contemplated by standing regulations in 43 CFR 4.902.

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing requirements in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Where an application for selection made by a Cook Inlet village corporation pursuant to § 12(b) of ANCSA is rejected by the Bureau of Land Management so that the same lands may be conveyed to Cook Inlet Region, Inc., under the terms of an amendment to ANCSA, and when an issue on appeal is whether the status of the lands in question is affected by the amendment, the village corporation's interest in the rejected application constitutes a property interest affected by a determination of the Bureau of Land Management sufficient to confer standing under the regulations in 43 CFR 4.902.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

A riparian owner cannot claim that a determination that a water body is nonnavigable adversely affects his property interest so as to confer standing to appeal

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

within the meaning of regulations in 43 CFR 4.902, where the appeal seeks to have the same water body found navigable and thereby deprive the appellant of a claim of riparian ownership rights.

Decisions made pursuant to ANCSA affect property interests differently with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

When pursuant to lawful authority, lands are withdrawn by Secretary's Order for an Air Navigation Site for the benefit of the Territory of Alaska, and when the Secretary's Order was not rescinded upon Statehood, and the State of Alaska continued operation of the ANS facility, the State has standing to assert a claim of property interest, within the meaning of 43 CFR 4.902, for purposes of appealing the status of the ANS.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES

Generally

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

The conveyance to Cook Inlet Region, Inc. (CIRI), of lands previously patented to the State of Alaska pursuant to P.L. 94-204, 89 Stat. 1145, *as amended* (1976), is in satisfaction of CIRI's ANCSA entitlement; must be treated as a conveyance pursuant to ANCSA; and, unless expressly excepted, is governed by the provisions of ANCSA as interpreted by the courts.

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in *Alaska Public Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Acreage Entitlement

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Interim Conveyance

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

Reconveyances

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, *as amended*, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

Regional Conveyances

When, by amendment to the Alaska Native Claims Settlement Act, an act of Congress expressly provides that specifically described lands shall be conveyed in fee simple to Cook Inlet Region, Inc., as part of its § 12(c) entitlement under ANCSA, the Bureau of Land Management is required to make conveyance notwithstanding that the same land was earlier made available and application for selection had been filed by a Native village corporation under provision of § 12(b) of ANCSA.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Regional Conveyances--Continued

officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Valid Existing Rights

Generally

When the State of Alaska has continued operation of an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never made application for the withdrawn land under any Federal law, the State's use of the ANS is not "issued" within the meaning of § 14(g) of ANCSA and whatever right the State has to continued use of the land is not protected pursuant to § 14(g).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

Third-Party Interests

The Board will order the exclusion of a disputed Native allotment from the conveyance of lands pursua to the Alaska Native Claims Settlement Act pending adjudication of the disputed allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 6

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2655.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, as amended, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 21, 1982) 89 I.D. 321

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982)
89 I.D. 346

DEFINITIONS

Federal Installation

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Frivolous Appeal

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Holding Agency

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Public Lands

Generally

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and NINT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Withdrawal for National Defense Purposes

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a)

DEFINITIONS--Continued

Withdrawal for National Defense Purposes--Continued

of ANCSA to defeat Native selection of the withdrawn lands.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

EASEMENTS

Access

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant's assertions regarding public use of the lake, made in connection with an attempt to appeal navigability determinations, are equally relevant to the question of whether the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant has appealed the Bureau of Land Management's failure or refusal to reserve a trail easement to the lake, and appellant's assertions indicate some possibility that the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant

EASEMENTS--Continued

Access--Continued

will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin E. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Public Easements

Criteria for reserving public easements for future roads, including railroads, in 43 CFR 2650.4-7(b)(1)(v) require that such easements be both site specific and actually planned for construction within 5 years of the date of conveyance. The minimal submission of a map, along with a letter stating that the map depicts proposed railroad extensions, cannot be found to demonstrate an actual plan for construction within the meaning of the regulation.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

Railroads, Telegraph and Telephone Lines

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in *Alaska Public Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

NATIVE LAND SELECTIONS

Generally

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS--Continued

Generally--Continued

cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

NAVIGABLE WATERS

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURVEY

Generally

Where § 13(b) of ANCSA addresses events in the land conveyance process which occur over a period of 3 years or longer, during which time surveys and protraction diagrams may be changed or corrected, it would be unreasonable to conclude that such changes or corrections must be ignored in deference to the survey or protraction in existence on Dec. 18, 1971.

Sec. 13(b) of ANCSA is not a mechanism to determine land entitlement, but is intended to ensure that

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

SURVEY--Continued

Generally--Continued

land is described through use of the most accurate protraction diagrams or surveys.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

WITHDRAWALS AND RESERVATIONS

Generally

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

APPEALS

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

APPEALS--Continued

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

APPEALS--Continued

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Ray, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

Utah Wilderness Ass'n, 65 IBLA 219 (July 9, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Easley Dove, 65 IBLA 340 (July 16, 1982)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

APPEALS--Continued

Where an appeal of a Bureau of Land Management action regarding the triggering of a small business set-aside timber sale program raises only class size issues, the appeal must be dismissed because the Small Business Administration, not the Department of the Interior, determines class size.

Public Timber Purchasers Group, 66 IBLA 244 (Aug. 17, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Maez, 67 IBLA 89 (Sept. 13, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

APPLICATIONS AND ENTRIES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 67 IBLA 315 (Mar. 19, 1982)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Milalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Curtis Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, it is improper to reject the application without first ruling on the petition.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Bayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

FILING

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp., et al., 61 IBLA 120 (Jan. 15, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicants.

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

INHERITABILITY

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Deemar, 63 IBLA 217 (Apr. 13, 1982)

PRIORITY

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or

APPLICATIONS AND ENTRIES--Continued

PRIORITY--Continued

becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter E. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

REINSTATEMENT

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, *as amended*, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

VALID EXISTING RIGHTS

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Vincent Barrard, 66 IBLA 100 (Aug. 4, 1982)

VESTED RIGHTS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have

APPLICATIONS AND ENTRIES--Continued

VESTED RIGHTS--Continued

acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

APPRAISALS

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Strong et al., 4 OHA 257 (Apr. 9, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

ATTORNEY'S FEES

EQUAL ACCESS TO JUSTICE ACT

An administrative appeal not required by statute to be adjudicated according to the provisions of 5 U.S.C. § 554 (1976) is not covered by the attorney's fees provisions of the Equal Access to Justice Act.

In re Attorney's Fees Request of Madelon Blum, 9 IBIA 281 (May 11, 1982) 89 I.D. 241

INDIAN CHILD WELFARE ACT OF 1978

Under the circumstances of this case, there is no authority under the Indian Child Welfare Act of 1978 to pay attorney's fees to appellant.

In re Attorney's Fees Request of Ronald Clabaugh, 9 IBIA 294 (May 26, 1982) 89 I.D. 257

ATTORNEYS

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

BOARD OF INDIAN APPEALS

JURISDICTION

The jurisdiction of the Board of Indian Appeals is governed by 43 CFR 4.330(a) and (b).

The jurisdiction of the Board of Indian Appeals is not determined by the characterization or descriptive title placed on agency action by the deciding official.

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

The Board has jurisdiction to determine whether a decision by an official of the BIA is properly characterized as discretionary.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

BOARD OF LAND APPEALS

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

BOUNDARIES

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

BUREAU OF INDIAN AFFAIRS

ADMINISTRATIVE APPEALS

Generally

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982)
89 I.D. 67

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982)
89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982)
89 I.D. 252

Acts of Agents of the United States

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

Garrett Coonovichnab v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982)
89 I.D. 71

BUREAU OF LAND MANAGEMENT

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

CLAIMS BY THE UNITED STATES

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Milalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

COAL LEASES AND PERMITS

GENERALLY

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

APPLICATIONS

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

LEASES

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp., et al., 63 IBLA 363 (Apr. 29, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later date.

Sunoco Energy Development Co., 65 IBLA 323 (July 15, 1982)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

COLOR OR CLAIM OF TITLE

GENERALLY

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

Rajneesh Investment Corp., 65 IBLA 307 (July 13, 1982)

APPLICATIONS

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

Rajneesh Investment Corp., 65 IBLA 307 (July 13, 1982)

GOOD FAITH

"Good faith." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willmorth, 64 IBLA 159 (May 25, 1982)

COMMUNICATION SITES

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 341 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

COMMUNICATION SITES--Continued

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

CONSTITUTIONAL LAW

GENERALLY

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Reardon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Coonceyichneah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Clive M. Statland, 65 IBLA 363 (July 20, 1982)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress.

Estate of Mary Martin Mataes Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

DUE PROCESS

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

CONTESTS AND PROTESTS

GENERALLY

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Evalt, 62 IBLA 116 (Mar. 4, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

CONTRACTS

CONSTRUCTION AND OPERATION

Actions of Parties

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Allowable Costs

Where a Government audit of a cost-plus-fixed-fee contract raised questions about the reasonableness of certain items of cost and the allocability of other cost items, and the contracting officer's decision generally followed the findings in the audit report, the reasonableness of cost items was a question of fact for the Board to decide and the allocability of costs pursuant to procurement regulations was likewise a matter for the Board to decide.

Onyx Corp., IBCA-1350-4-80 (Apr. 14, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

Where the Board found that the contracting officer had unreasonably disallowed certain costs in their entirety because of the difficulty of allocability, mainly resulting from subcontract work extending beyond the date of acceptance of the final report for the required research study, but also found that the contract work was timely performed, accepted as satisfactory, and was of considerable benefit to the Government; the Board held, by the jury verdict approach, that appellant was entitled to a portion of its claimed additional costs in the amount of $45,000.

Appeal of Eyring Research Institute, IBCA-1169-10-77 (June 25, 1982) 89 I.D. 350

Changed Conditions (Differing Site Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Syblon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

Contract Clauses

Where an architect designed a nearly flat roof having a pitch of 4 inches in 20 feet with specifications directing the construction contractor to install the roof in accordance with the manufacturer's installation manual, but the published literature of the manufacturer called for a minimum pitch of 3 inches per foot and contained no provision for installing a roof as designed by the architect, the Board found that leaks in the roof were the result of negligent performance of services on the part of the architect in the design of the building.

Appeal of the Eggers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982)
89 I.D. 233

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982)
89 I.D.

A claim for additional costs attributed to a suspension of work is denied where the work stoppage resulted from the action of third parties without the fault of the Government.

Appeal of Nielsons, Inc., IBCA-1536-11-81 (Sept. 22, 1982)

Differing Site Conditions (Changed Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

In a differing site condition claim under a contract for excavation of a tunnel in the Central Arizona Project where consulting geologists, retained by three different bidders as well as the manufacturer of the tunneling machine, each independently concluded that the geological data furnished by the Bureau of Reclamation indicated there would be sufficient standup time in the top and sides of the tunnel to permit installation of tunnel supports in accordance with the specifications, the Board found a differing site condition existed when the contractor encountered large blocks of rock with no standup time which fell immediately out of the top and sides of the tunnel, interfering with the cutterhead of the tunneling machine and with placement of the precast concrete segments for supporting and lining the tunnel.

In two separate differing site condition claims where the contractor encountered soft invert, which would not support the weight of the tunneling machine, the Board found that a differing site condition existed when the machine encountered a 9-foot layer of clay between two drill holes, neither of which showed a layer of clay, but the Board found there was no differing site condition when the machine encountered very soft rock between two drill holes where only 45 and 50 percent of the core material was recovered from the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

drill holes and the lack of recovery indicated that soft material, not suitable for coring, was present at the invert level.

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

A claim for a first category differing site condition is denied where a deposit of organic material encountered in excavation did not differ materially from what the contractor could reasonably have expected to encounter from a site examination and the contract indications of subsurface conditions.

Appeal of Parkland Design & Development Corp., IBCA-1442-3-81 (Aug. 24, 1982)

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Sylvon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

Estimated Quantities

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Sylvon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

Labor Laws

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Subcontractors and Suppliers

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Third Persons

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

Waiver and Estoppel

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

Warranties

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Warranties--Continued

latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982) 89 I.D.

CONTRACT DISPUTES ACT OF 1978

Interest

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982) 89 I.D. 233

Jurisdiction

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

The Board denies a Government motion to dismiss an appeal predicated upon the ground, *inter alia*, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

DISPUTES AND REMEDIES

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. [illegible] by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A construction contractor's claim for substantial increases in equitable adjustments allowed by the contracting officer for directed changes is denied where the Board finds that appellant has failed to sustain the burden of proving a causal connection between the costs claimed and the alleged Government actions, and failed to provide reliable cost data to show the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Government computations were inadequate compensation for the changed work.

Appeals of Porter Mechanical Contractors, Inc., IBCA-1357-5-80 & IBCA-1366-6-80 (Feb. 1, 1982) 89 I.D. 53

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Where a contractor's conduct and correspondence for a year after delivery of equipment shows acknowledgement of defects which it agrees to repair, a claim for reimbursement for the cost of the repair work is denied where the contractor is unable to prove that the defects did not actually exist.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

Damages

Measurement

Where the Government failed to notify the architect that it had rejected a solution for leaks proposed by the manufacturer of the roof panels and forwarded by the architect, the Government's failure precluded the architect from submitting a proposal for a conventional built-up roof and resulted in unnecessary and avoidable expense when the Government had the roof repaired by another contractor at a higher cost. The architect was entitled to be paid the difference between the cost of the conventional roof and the higher cost which the Government had deducted from payments due the architect.

Appeal of the Eggers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

Equitable Adjustments

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

Jurisdiction

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982)
89 I.D. 365

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Convenience

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Termination for Default

Generally

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

FORMATION AND VALIDITY

Cost-type Contracts

Where the Government entered into a sole source, cost-plus-fixed-fee contract with appellant for the purpose of conducting a research and analysis study to determine the toxicity of certain gases emanating from a citrate process used for flue gas desulfurization in the operation of mines, and appellant entered into a subcontract with a University to accomplish the major portion of the required research, the Board found that the Government was not involved in the formation or preparation of the subcontract, and that although they may have intended to enter into a firm, fixed-price contract, the contracting parties did, in fact, by the clear and unambiguous language employed, enter into a cost-reimbursement type contract.

Appeal of Eyring Research Institute, IBCA-1169-10-77 (June 25, 1982) 89 I.D. 350

Implied and Constructive Contracts

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shatco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 52

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Implied and Constructive Contracts--Continued

The Board found that there was no implied contract with the Government where a management consultant submitted a second proposal for 50 man-days of service to a private corporation established by the Blackfeet Indian Tribe after the consultant's initial proposal concealed the extent of the service contemplated and did not indicate that any additional service would be required. Payment for the service in the initial proposal by a Government grant to the tribe did not give rise to an obligation to pay for the service in the second proposal since there was no Government acceptance of the second proposal and all assurances that the consultant would continue to be paid came from persons outside the Government.

Appeal of W. E. Hyland & Hyland/Associates, IBCA-1332-2-80 (Aug. 31, 1982) 89 I.D. 435

PERFORMANCE OR DEFAULT

Acceptance of Performance

Under a fixed-price contract requiring a report in accordance with a statement of work contained in appellant's letter incorporated into the contract, the Board finds the final report was improperly rejected by applying acceptance criteria not contained in the contract.

Appeal of Boston Technologies, Inc., IBCA-1527-10-81 (Mar. 25, 1982)

Breach

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Intra Technology Corp., IBCA-1353-9-80 (Mar. 4, 1982)

Excusable Delays

Upon finding that the contractor had agreed to a modification of the contract whereby the Government extended the completion date and increased the total contract price as consideration for the Government's admitted cause of delay of performance, the Board holds that an unconditional, bilateral settlement was reached resulting in a bar to contractor's subsequent claim based on excusable delay.

Appeal of Environmental Research & Technology, Inc., IBCA-1244-1-79 (July 12, 1982)

Suspension of Work

A claim for additional costs attributed to a suspension of work is denied where the work stoppage

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work--Continued

resulted from the action of third parties without the fault of the Government.

Appeal of Nielsons, Inc., IBCA-1536-11-81 (Sept. 22, 1982)

Waiver and Estoppel

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

The Board holds: (1) That after waiver of 2 completion dates extending over a 6-month period, a new completion period of 30 days established by the contracting officer was reasonable; (2) that a letter from the contractor, dated 7 days before the end of the final 30-day completion period, advising the Government that it was unable to complete the work constituted an anticipatory breach on the part of the contractor; and (3) appellant therefore failed to establish a right to have the default termination converted to a termination for convenience of the Government under a waiver theory.

Appeal of Environmental Research & Technology, Inc., IBCA-1244-1-79 (July 12, 1982)

CONVEYANCES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

CONVEYANCES--Continued

GENERALLY--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

INTEREST CONVEYED

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

DESERT LAND ENTRY

GENERALLY

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

An application for a desert land entry which is not accompanied by the statements of two credible witnesses as required by 43 U.S.C. § 322 (1976), is not properly executed under 43 CFR 2521.2 and is properly rejected as incomplete. Where the application has been filed in a competing situation pursuant to a simultaneous filing, the application may not be corrected and loses its priority in favor of the second drawn application.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

APPLICATIONS

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

Gary E. Carter, 65 IBLA 338 (July 15, 1982)

An application for a desert land entry which is not accompanied by the statements of two credible witnesses as required by 43 U.S.C. § 322 (1976), is not properly executed under 43 CFR 2521.2 and is properly rejected as incomplete. Where the application has been filed in a competing situation pursuant to a simultaneous filing, the application may not be corrected and loses its priority in favor of the second drawn application.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Hilalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

CLASSIFICATION

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Hilalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

LANDS SUBJECT TO

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

DESERT LAND ENTRY--Continued

LANDS SUBJECT TO--Continued

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Hilalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

ENVIRONMENTAL POLICY ACT

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

ENVIRONMENTAL QUALITY

GENERALLY

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta P. Stroock, 6[illegible] IBLA 119 (Apr. 2, 1982)

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

Dolores M. Lisman, 67 IBLA 72 (Sept. 10, 1982)

EQUITABLE ADJUDICATION

GENERALLY

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in *Lola I. Doe*, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Neece et al., 65 IBLA 12 (June 21, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Ctay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A *sine qua non* of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. L. Colson, 63 IBLA 221 (Apr. 15, 1982)

While employees of the Department might be required to either forward or return documents transmitted to the wrong office, no estoppel can arise where the alleged failure to forward or return misment mail was occasioned by the fact that the document was not actually received by the Department.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

ESTOPPEL--Continued

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Petersen, 66 IBLA 156 (Aug. 10, 1982)

Failure to file timely appeal in conformity to Departmental regulations precludes appellant from obtaining review of Administrative Law Judge's initial decision as well as collateral orders.

Estate of George Swift Bird, 10 IBIA 63 (Aug. 16, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Renewable Energy, Inc., 67 IBLA 306 (Sept. 30, 1982)
89 I.D.

EVIDENCE

GENERALLY

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Ervin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Roy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Doye, 65 IBLA 340 (July 16, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitute such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

BURDEN OF PROOF

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald E. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one

EVIDENCE--Continued

BURDEN OF PROOF--Continued

asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin F. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Burr, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

EVIDENCE--Continued

CREDIBILITY

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Heldman, 65 IBLA 180 (June 29, 1982)

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

PREPONDERANCE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

EVIDENCE--Continued

PRESUMPTIONS

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald B. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Arvin F. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with

EVIDENCE--Continued

PRESUMPTIONS--Continued

the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Diane M. Berndt, Richard W. Byers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

E. P. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

Daniel E. Wyles, 64 IBLA 339 (June 10, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Lynda Bagley Dove, 65 IBLA 340 (July 16, 1982)

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Janet Thompson, 65 IBLA 383 (July 20, 1982)

The legal presumption that administrative officials have properly discharge their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as a instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth E. Anne, 66 IBLA 126 (Aug. 10, 1982)

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

PRIMA FACIE CASE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor E. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

EVIDENCE--Continued

SUFFICIENCY

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

E. F. Colson, [illegible] IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin F. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Lynda Bagley Doyo, 65 IBLA 340 (July 16, 1982)

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Janet Thompson, 65 IBLA 383 (July 20, 1982)

The legal presumption that administrative officials have properly discharge their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as a instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

FEDERAL EMPLOYEES AND OFFICERS

GENERALLY

An upward amenity adjustment of 2 percent to basic rental rate is correctly calculated in accordance with the economically homogeneous area survey method, IMPM 114-52.3C3(b), when the number of amenities present for Government-furnished quarters is one more than the average number of amenities present in the private rental survey of comparable private housing in an economically homogeneous area in which the Government rental quarters are located.

Appeal of Mary T. Foss, 5 OHA 15 (Sept. 30, 1982)

AUTHORITY TO BIND GOVERNMENT

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Agnes Jones et al., 61 IBLA 149 (Jan. 18, 1982)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 9, 1982)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Madison G. Locke et al., 65 IBLA 122 (June 25, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERALLY

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.C.T.S., 61 IBLA 166 (Jan. 25, 1982)

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 116

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

H. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application

GENERALLY--Continued

will be affirmed where there is insufficient basis in the record to disturb it.

Jack W. Mays, Gary L. Harrell, 66 IBLA 222 (Aug. 16, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned W. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seitel, Clara Seitel, 63 IBLA 77 (Mar. 30, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in a mining claim being declared abandoned and void.

Oregon Portland Cement Co., 66 IBLA 204 (Aug. 13, 1982)

CORRECTION OF CONVEYANCE DOCUMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a cannery establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

EXCHANGES

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

GRAZING LEASES AND PERMITS

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GRAZING LEASES AND PERMITS--Continued

holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo R. Baez, 67 IBLA 89 (Sept. 13, 1982)

INVENTORY AND IDENTIFICATION

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

PERMITS

The provisions of sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1976), do not authorize the issuance of temporary use permits absent an existing right-of-way, or for use as a communications site right-of-way.

Dwight L. Zundel, 62 IBLA 81 (Feb. 25, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned W. Scott, Jr., 61 IBLA 109 (Jan. 6, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Denver B. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Gary Lavrack, Floyd Vigoud, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Bull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Manuel M. Hernandez, 65 IBLA 201 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

David G. Stall, 66 IBLA 35 (July 23, 1982)

William P. Goechter et al., 66 IBLA 230 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Reirdon Dokseus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborne, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Star Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-1.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Gregory B. Harrington, 64 IBLA 331 (June 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Bace et al., 63 IBLA 1 (Mar. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Cortez Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer E. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Clive M. Stirland, 65 IBLA 363 (July 20, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Darque, 63 IBLA 67 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seabel, Clara Seabel, 63 IBLA 77 (Mar. 30, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 127 (Apr. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambrix, 63 IBLA 170 (Apr. 8, 1982)

Cruz M. Chaves, 67 IBLA 270 (Sept. 27, 1982)

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ibard, 63 IBLA 200 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Jako Manang, 63 IBLA 206 (Apr. 9, 1982)

R. Del & Associates, 65 IBLA 170 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Behney III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Yerchota, 64 IBLA 23 (May 6, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements

of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

George Whitehead, 64 IBLA 111 (May 17, 1982)

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 118 (May 19, 1982)

Where the evidence shows that the owner of unpatented mining claims located after Oct. 21, 1976, in calendar year 1979, did file with BLM by Dec. 30, 1980, a copy of the notice of intention to hold the claims which notice was filed also in the local offices of the state wherein the notices of location were filed, the mining claimant has complied with the statutory requirements of the Federal Land Policy and Management Act of 1976.

AZL Resources, Inc., 64 IBLA 126 (May 20, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 24, 1982)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Donald Klein, Rozelle Klein, 66 IBLA 212 (Aug. 16, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

H. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Harvey A. Wolcott et al., 65 IBLA 369 (July 20, 1982)

Elaine Marianne McLevie, 67 IBLA 220 (Sept. 23, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Bukala, 64 IBLA 313 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Raymond L. Dinwiddie, 64 IBLA 314 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Steve Kosanke, 66 IBLA 46 (July 27, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Mollgar, 65 IBLA 180 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Fawn Burr, 65 IBLA 277 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Elmer Transtrum, 65 IBLA 285 (July 13, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Peter Laczay, 65 IBLA 291 (July 13, 1982)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Herschel Knapp, 65 IBLA 314 (July 14, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Robert A. Sandstedt, Shirley Stegweld, 65 IBLA 367 (July 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

James T. Hackworth, 66 IBLA 132 (Aug. 10, 1982)

Where a mining claim was located in Nov. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (Aug. 10, 1982)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Geoffrey L. Warren, 66 IBLA 165 (Aug. 11, 1982)

A. L. Stutenroth, 67 IBLA 6 (Sept. 1, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Vernon J. Nell, 66 IBLA 171 (Aug. 12, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Carl Eichenhofer, 66 IBLA 226 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Wade McNeil, Flora McNeil, 66 IBLA 228 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

James R. Braymen, 67 IBLA 138 (Sept. 16, 1982)

The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976 and 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. Failure to file the required instrument within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Robert Brennan, 67 IBLA 218 (Sept. 23, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

John Andrew Batok, 67 IBLA 272 (Sept. 28, 1982)

Where a mining claim was located in Oct. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Roger Ferguson, Sybil R. Ferguson, 67 IBLA 284 (Sept. 29, 1982)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp., et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Dale L. Fatchen, Guy W. Fatchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther M. Moore, 61 IBLA 391 (Feb. 18, 1982)

Kay E. Evets, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas R. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Elmer E. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

James Heldman, 65 IBLA 180 (June 29, 1982)

Joe Karren, Sr., et al., 65 IBLA 307 (July 23, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William H. B. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Massie, 64 IBLA 137 (May 20, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Thomas G. Bacon et al., 64 IBLA 104 (May 17, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Gregory W. Harrington, 64 IBLA 331 (June 10, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

Edwin R. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Emerald Mining Co., 65 IBLA 172 (June 29, 1982)

Fawn Russ, 65 IBLA 277 (July 12, 1982)

Manuel B. Hernandez, 65 IBLA 281 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

J & R Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Clive R. Stirland, 65 IBLA 363 (July 20, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William B. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Alan T. Irons, James L. Barnes, 66 IBLA 336 (Aug. 26, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

James E. Morgan, 67 IBLA 221 (Sept. 23, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Madison et al., 62 IBLA 249 (Mar. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney D. Smith, 62 IBLA 376 (Mar. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Frances J. Taylor, 63 IBLA 87 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald E. Barron, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George F. Hughes et al., 63 IBLA 146 (Apr. 7, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajon Minerals, 64 IBLA 261 (June 2, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

James W. Gough, 65 IBLA 59 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM on Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the *Federal Register* notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the

fact that the amended location notice references the original location notice.

J. R. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Apr. 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Eugene J. Curless, 67 IBLA 145 (Sept. 16, 1982)

REPEALERS

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie M. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

RIGHTS-OF-WAY

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 24, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will be affirmed where there is insufficient basis in the record to disturb it.

Jack W. Mays, Gary L. Harrell, 66 IBLA 222 (Aug. 16, 1982)

In granting a right-of-way for a domestic water pipeline pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable. However, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a) where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed.

Jean Mountaingrove, Ruth Mountaingrove, 67 IBLA 154 (Sept. 20, 1982)

RULES AND REGULATIONS

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

WILD AND FREE-ROAMING HORSES AND BURROS

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

WILDERNESS

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of

the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of

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sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

While the extent of public support for wilderness preservation is not a proper factor to be considered during the inventory phase of the wilderness review mandated by sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), public comments which relate to the existence or nonexistence of wilderness characteristics within an inventory unit must be evaluated.

While the existence of a realistic possibility that land within an inventory unit possesses wilderness characteristics is sufficient to require that the land be intensively inventoried, such land may be included within a wilderness study area (WSA), only where it is shown that the statutory criteria have, in fact, been met.

Where BLM has refused to designate an area as a wilderness study area (WSA), pursuant to sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), an appellant must not merely show that various errors may have occurred in the consideration of the unit, but is required to show that these errors resulted in an erroneous conclusion as to the unit's suitability for further study.

Sierra Club, 61 IBLA 320 (Feb. 10, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter D. Persch, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Bannek Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 421 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, *i.e.*, rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

R. E. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl M. Clark, 65 IBLA 153 (June 29, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may

WILDERNESS--Continued

include size, natural screening, and the ability of the user to find seclusion.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Tom H. Ford, 66 IBLA 14 (July 23, 1982)

WILDERNESS--Continued

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was applied improperly.

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Where the record evinces BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

BLM's practice of examining the mineral potential in the study phase of the wilderness review process, rather than the inventory phase, does not violate sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976).

Sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), does not require that the policy and procedures of the Wilderness Inventory Handbook be promulgated as rules and regulations pursuant to sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553 (1976).

[illegible] Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

City of [illegible], 66 IBLA 282 (Aug. 19, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sierra Club et al., 66 IBLA 300 (Aug. 20, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

National Public Lands Task Force et al., 66 IBLA 340 (Aug. 26, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires, *inter alia*, that an area designated for wilderness preservation *generally* appear to have been affected *primarily* by the forces of nature with the imprint of man's work *substantially* unnoticeable. The underscored language, taken verbatim from the statute, is ample support for the proposition that a wilderness study area (WSA) need not be free of all intrusions.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Ken Brower, 67 IBLA 124 (Sept. 16, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Charles H. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness, opportunities for solitude, or opportunities for primitive and unconfined recreation, are entitled to considerable deference.

An appellant seeking reversal of a decision to include land in a wilderness study area must show that

the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

FEES

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

FEES--Continued

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

GEOLOGICAL SURVEY

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Delco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

GEOTHERMAL LEASES

GENERALLY

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

GEOTHERMAL LEASES--Continued

ACREAGE LIMITATIONS

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

APPLICATIONS

Generally

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

COMPETITIVE LEASES

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

CONSENT OF AGENCY

The directives of 30 U.S.C. § 1014(b) (1976) and 43 CFR 3201.1-3 are mandatory and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

R. B. Towne, Jr., 67 IBLA 187 (Sept. 22, 1982)

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

ENVIRONMENTAL PROTECTION

Generally

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

GEOTHERMAL LEASES--Continued

ENVIRONMENTAL PROTECTION--Continued

Generally--Continued

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

KNOWN GEOTHERMAL RESOURCES AREA

An application for a noncompetitive geothermal resources lease must be rejected if the land sought is within a known geothermal resources area and no evidence has been presented that the KGRA determination was in error.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

LANDS SUBJECT TO

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

NONCOMPETITIVE LEASES

An application for a noncompetitive geothermal resources lease must be rejected if the land sought is within a known geothermal resources area and no evidence has been presented that the KGRA determination was in error.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

PATENTED OR ENTERED LANDS

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

REINSTATEMENT

A late rental payment may be "justifiable" and entitle a geothermal lease, which terminated by operation of law, to reinstatement if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, circumstances are within the control of the lessee where the proximate cause of a

GEOTHERMAL LEASES--Continued

REINSTATEMENT--Continued

late payment was a computer error and not the illness of the individual entrusted with making the payment.

U.S. Geothermal Corp., Earth Power Corp., 61 IBLA 265 (Jan. 29, 1982)

STIPULATIONS

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

GRAZING AND GRAZING LANDS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

GRAZING LEASES

PREFERENCE RIGHT APPLICANTS

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

RENEWAL

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

GRAZING PERMITS AND LICENSES

GENERALLY

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands and a decision requiring that domestic livestock be ear-tagged will be sustained where the record establishes a rational basis therefor.

C-Punch Corp., 67 IBLA 293 (Sept. 29, 1982)

ADJUDICATION

Implementation of the Taylor Grazing Act of 1934, *as amended*, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

APPEALS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Paez, 67 IBLA 89 (Sept. 13, 1982)

APPORTIONMENT OF FEDERAL RANGE

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE--Continued

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity of a unit of the Federal range, based on a range survey, will not be disturbed in the absence of positive evidence of error.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

HEARINGS

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

HEARINGS--Continued

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing or appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 269 (June 4, 1982)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William P. Tennyson, Jr., 66 IBLA 30 (July 23, 1982)

HOMESTEADS (ORDINARY)

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

CLASSIFICATION

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, it is improper to reject the application without first ruling on the petition.

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

CLASSIFICATION--Continued

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Mayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

LANDS SUBJECT TO

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Bayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

INDIAN CHILD WELFARE ACT OF 1978

FINANCIAL GRANT APPLICATIONS

Funding

Under Departmental regulations, areas officially designated to be on or near an Indian reservation are considered part of the reservation for purposes of funding social services programs. Departmental regulations implementing the Indian Child Welfare Act of 1978 do not permit an Indian tribe to combine with a social services corporation within an area designated "near reservation" for social services funding purposes.

Navajo Tribe v. Commissioner of Indian Affairs,
10 IBIA 78 (Aug. 30, 1982) 89 I.D. 424

INDIAN LANDS

ASSIGNMENTS

While portions of assigned Indian trust land might be properly canceled for nonuse by appellant assignee, where it appeared she had leased nonresidential portions of the assigned lands despite provisions of her assignment which required the lands be devoted entirely to her exclusive personal use and that of her heirs, cancellation of the assignment, even if found to be a legally proper response to the leasing, may not be ordered without giving prior notice of the proposed action, including the reasons therefor, and an opportunity to respond.

Lois Jean Brewer v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 110 (Sept. 30, 1982) 89 I.D.

CEDED LANDS

Generally

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

Restoration

Restoration of ceded lands to tribal ownership under sec. 3 of the Indian Reorganization Act of June 18, 1934, held not to require apportionment of

INDIAN LANDS--Continued

CEDED LANDS--Continued

Restoration--Continued

income from restored lands on the basis of populations at the time of cession.

Delaware Tribe of Western Oklahoma v. Acting Deputy Assistant Secretary--Indian Affairs (Operations),
10 IBIA 40 (July 30, 1982) 89 I.D. 392

The Seneca-Cayuga Tribe ceded lands to the United States by treaty which provided for creation of a reservation for Wyandotte Tribe. Where the Wyandotte Tribe later ceded the lands to the United States for use as school lands, the subsequent restoration of those lands by the United States to the Wyandotte Tribe, under 40 U.S.C. § 483(a)(2), was held proper.

Seneca-Cayuga Tribe of Oklahoma v. Deputy Assistant Secretary--Indian Affairs, 10 IBIA 90 (Sept. 2, 1982)
89 I.D.

LEASES AND PERMITS

Generally

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wedding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158
(Jan. 26, 1982)

Grazing

Allocation

Under 25 CFR 151.10, the tribe establishes procedures and priorities for allocation of tribal, tribally controlled Government, and individual lands.

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is a higher priority user of land than an Indian grazing non-Indian-owned livestock.

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

Daniel Conway v. Acting Area Director, Billings Area Office, Bureau of Indian Affairs, 10 IBIA 25 (July 16, 1982) 89 I.D. 382

Revocation or Cancellation

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

Daniel Conway v. Acting Area Director, Billings Area Office, Bureau of Indian Affairs, 10 IBIA 25 (July 16, 1982) 89 I.D. 382

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business/Agriculture

Rentals

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

Oil and Gas

Sec. 2 of the 1938 Tribal Mineral Leasing Act, codified at 25 U.S.C. § 396b (1976), requires advertisement for competitive bids prior to leasing of unallotted tribal lands for oil and gas development where the leasing tribe is not organized under the provisions of the Indian Reorganization Act of June 18, 1934.

Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72 (Aug. 25, 1982) 89 I.D. 412

Rental Rates

Rental increase based upon calculated increase in value of leased Indian trust land was properly assessed under terms of a written lease permitting rental adjustment at 5-year intervals.

Gregory Snelson v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 57 (July 30, 1982)

PATENT IN FEE

Jurisdiction

While the Federal trust responsibility over allotted land is extinguished when ownership of the land is acquired by a non-Indian, an erroneous heirship determination involving an interest in trust lands passing to a non-Indian does not prevent correction of Department records when a fee patent has not yet been issued. Departmental regulations enable the Department to correct its records to reflect the factual circumstances of the case and to correct discovery of legal error while the probate of a trust estate is still pending within the Department.

Estate of Bernita Elizabeth Stamp Payton, 9 IBIA 200 (Mar. 22, 1982)

TRIBAL LANDS

Sec. 2 of the 1938 Tribal Mineral Leasing Act, codified at 25 U.S.C. § 396b (1976), requires advertisement for competitive bids prior to leasing of unallotted tribal lands for oil and gas development where the leasing tribe is not organized under the provisions of the Indian Reorganization Act of June 18, 1934.

Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72 (Aug. 25, 1982) 89 I.D. 412

INDIAN PROBATE

ADMINISTRATIVE PROCEDURE (*See also* HEARING, REHEARING--if included in this Index.)

Applicability to Indian Probate

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

ADOPTION (*See also* CHILDREN, ADOPTED--if included in this Index.)

Generally

Proof of adoption in Indian probate proceedings under the jurisdiction of the Department of the Interior is governed by Federal statute as expressed in 25 U.S.C. § 372a (1976).

Estate of Mary Martin Matoes Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

APPEAL (*See also* PLEADING, RECONSIDERATION--if included in this Index.)

Dismissal

Under 43 CFR 4.320 (1981), service of a copy of a notice of appeal on all interested parties is not a jurisdictional requirement, and an appeal will not be dismissed for failure of service when interested parties have received actual notice of the pendency of the appeal.

Estate of Wilma Florence First Youngman, 10 IBIA 3 (June 4, 1982) 89 I.D. 291

Standing to Appeal

Failure to file timely appeal in conformity to Departmental regulations precludes appellant from obtaining review of Administrative Law Judge's initial decision as well as collateral orders.

Estate of George Swift Bird, 10 IBIA 63 (Aug. 16, 1982)

CHILDREN, ILLEGITIMATE (*See also* INHERITING--if included in this Index.)

Right to Inherit

Acts of Congress Controlling

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is

INDIAN PROBATE--Continued

CHILDREN, ILLEGITIMATE (*See also* INHERITING--if included in this Index.)--Continued

Right to Inherit--Continued

Acts of Congress Controlling--Continued

entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982) 89 I.D. 193

EVIDENCE

Insufficiency of

At a hearing ordered upon a petition for reopening an estate to permit evidence to be taken to rebut an initial determination of heirship, the burden of establishing that the initial order was in error is upon the petitioners. Proof that decedent was survived by a son offered by the mother of the child and supported by a State birth certificate and the judicial admission of decedent that the child was his son was not overcome by statements of other relatives of decedent that decedent had denied paternity and conducted himself as though he were childless.

Estate of Robert M. Morin, 9 IBIA 188 (Mar. 5, 1982)

Where appellant children sought to overturn finding that appellee was a daughter of decedent, which finding was based in part upon a birth certificate showing decedent to be appellee's father and upon testimony of a relative of the mother concerning the circumstances of appellee's birth, the offered testimony of another man that he instead could possibly have been the father, which was vague and uncorroborated by other evidence, was insufficient to support reversal of prior findings concerning heirship.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982) 89 I.D. 193

The testimony of decedent's wife and legitimate children that they were unaware of the existence of an illegitimate child until after decedent's death was insufficient to support reversal of finding of paternity based in part upon census records and upon the testimony of appellee's mother.

Estate of Harry M. Johnson, 10 IBIA 1 (June 3, 1982)

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

Reopening of estate closed for 45 years was properly denied where the petition to reopen and record of prior proceedings taken together established petitioner lacked evidence to show error in the determination of heirs made by the examiner in 1937.

Estate of Frank Pays, 10 IBIA 61 (July 30, 1982)

INDIAN PROBATE--Continued

KLAMATH TRIBE

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Wizan Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

REOPENING

Generally

A petition to reopen an Indian estate and its supporting documentation must, to be favorably considered, present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

Estate of Mary Martin Mataes Andrew Cays, 9 IBIA 196 (Mar. 15, 1982)

When reopening is denied by the Administrative Law Judge, a person seeking reopening should offer the evidence that would be presented at an evidentiary hearing to the Board of Indian Appeals which shall then decide, based upon that evidence, whether a sufficient showing was made to mandate reopening.

Reopening is granted for the purpose of preventing a miscarriage of justice based upon a showing that the evidence presented at the original hearing was incorrect, incomplete, or otherwise inadequate.

Estate of Wilma Florence First Youngman, 10 IBIA 3 (June 4, 1982) 89 I.D. 291

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

Reopening of estate closed for 45 years was properly denied where the petition to reopen and record of prior proceedings taken together established petitioner lacked evidence to show error in the determination of heirs made by the examiner in 1937.

Estate of Frank Pays, 10 IBIA 61 (July 30, 1982)

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

A petition to reopen the probate of an Indian trust estate must, to be favorably considered, present some legal theory and the factual basis set out in supporting documentation to support the claimed relief.

Estate of Clara Whitehip, 10 IBIA 107 (Sept. 29, 1982)

STATE LAW

Applicability to Indian Probate, Intestate Estates

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is entitled to share in his estate in the same manner as his legitimate children.

Estate of Willie Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

Applicability to Indian Probate, Testate

The Administrative Law Judge correctly ruled that the determination of the identity of all a decedent's heirs is unnecessary in a case where there is found to be a valid will disposing of the testator's entire estate.

Estate of Frank (Francis) Hoahtigh, 9 IBIA 190 (Mar. 9, 1982)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)

Generally

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

Option to Purchase Real Property

An Indian testator may create an option to purchase trust real property by will.

Estate of Thomas Hall, Sr., 10 IBIA 17 (June 28, 1982)
89 I.D. 361

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity

Witnesses' Testimony

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since youth and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and directed devises of trust property to each of her surviving children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children ultimately benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable under the circumstances.

Where the witnesses to an Indian will were agency clerks who were acquainted through prior business dealings with decedent and testified they knew her to be the competent manager of a farm composed largely of trust lands which she was instrumental in acquiring through land purchases, exchanges, and leases which she arranged, the testimony of a group of treating physicians concerning the effect of two amputations upon decedent's overall health did not tend to contradict the witnesses' testimony that decedent was competent to make a will, nor did the fact that decedent had become an invalid indicate that she lacked competence to make a will.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

WITNESSES

Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed on appeal because he had the opportunity to observe and hear the witnesses.

Estate of Grace Akeen, a.k.a. Grace Akins, 10 IBIA 14 (June 23, 1982)

Estate of Joshua Stone Arrow, 10 IBIA 104 (Sept. 28, 1982)

INDIAN REORGANIZATION ACT

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982)
89 I.D. 132

INDIAN TRIBES

CONSTITUTION, BYLAWS AND ORDINANCES

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

ELECTIONS

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982) 89 I.D. 252

FEDERAL RECOGNITION

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

JUDGMENT FUNDS

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

INDIAN TRIBES--Continued

JUDGMENT FUNDS--Continued

Tonia Marie Cassady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

RESERVATION BOUNDARY

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 et seq. (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982) 89 I.D. 463

INDIANS

FISCAL AND FINANCIAL AFFAIRS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connevichnab v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

INDIANS--Continued

FISCAL AND FINANCIAL AFFAIRS--Continued

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

GUARDIANSHIP

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

INDIVIDUAL INDIAN MONEY ACCOUNTS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Yours Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

SOCIAL WELFARE

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

INDIANS--Continued

TRUSTS

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs,
9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

LACHES

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

LACHES--Continued

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

E. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

MILLSITES

GENERALLY

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith,
67 IBLA 225 (Sept. 23, 1982)

DEPENDENT

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia B. Beckley,
66 IBLA 357 (Aug. 27, 1982)

MILLSITES--Continued

DETERMINATION OF VALIDITY

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael C. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

PATENTS

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

MINERAL LANDS

GENERALLY

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

DETERMINATION OF CHARACTER OF

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489 *as amended* by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

One will not be considered an innocent purchaser for value under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), when the evidence presented at a hearing supports a finding that the lands in question were of known mineral character on the date of the original sale by the railroad, and the purchaser should have known at the time of purchase that such lands were excepted from the grant to the railroad.

United States v. Southern Pacific Transportation Co. & Donald K. Lee, 66 IBLA 191 (Aug. 13, 1982)

LEASES

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

MINERAL RESERVATION

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

NONMINERAL ENTRIES

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

PROSPECTING PERMITS

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

GeoResources, Inc., 67 IBLA 297 (Sept. 29, 1982)

MINERAL LEASING ACT

GENERALLY

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
(Feb. 26, 1982) 89 I.D. 82

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp., et al., 63 IBLA 363 (Apr. 29, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and

MINERAL LEASING ACT--Continued

GENERALLY--Continued

other terms and conditions must be made when the 20-year period expires and not at some later date.

Sunoco Energy Development Co., 65 IBLA 323 (July 15, 1982)

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

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Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

MINERAL LEASING ACT--Continued

APPLICABILITY

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

CITIZENSHIP

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

James M. Chudnow, 67 IBLA 193 (Sept. 22, 1982)

COMBINED HYDROCARBON LEASES

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

MINERAL LEASING ACT--Continued

COMBINED HYDROCARBON LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

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Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

LANDS SUBJECT TO

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James E. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Rachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Emery Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

LANDS SUBJECT TO

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

MINERALS MANAGEMENT SERVICE

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

MINES AND MINING

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

MINING CLAIMS

GENERALLY

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

Gilbert W. Baily, 65 IBLA 223 (July 9, 1982)

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

MINING CLAIMS--Continued

GENERALLY--Continued

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

ABANDONMENT

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

William E. M. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Alan T. Tiegs, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Hiltz, 61 IBLA 113 (Jan. 6, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Dale T. Hatcher, Guy W. Hatcher, 61 IBLA 185 (Jan. 26, 1982)

Michael Rooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther R. Moore, 61 IBLA 391 (Feb. 18, 1982)

Ray E. Brees, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Robert S. Yerxa, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas R. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fourer, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Ganner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Barley, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison T. Locke et al., 65 IBLA 122 (June 25, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

James Heldman, 65 IBLA 180 (June 29, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. The burden of proof of the intent to abandon rests upon the party who asserts it, and the proof must be clear and convincing. Where the evidence is persuasive that a notice of abandonment mistakenly described the wrong claim, and that the claimant thereafter remained in occupancy and possession for many years, there was neither an intent to abandon nor actual abandonment, and the erroneous notice may be repudiated.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that her proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with

MINING CLAIMS--Continued

ABANDONMENT--Continued

these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Arpin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of these documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely these documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Barger, 63 IBLA 67 (Mar. 30, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald D. Bannon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

E. Del & Associates, 65 IBLA 170 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A *sine qua non* of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 54 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 24, 1982)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Donald Klein, Mozelle Klein, 66 IBLA 212 (Aug. 16, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Stanley Sims, 64 IBLA 257 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajon Minerals, 64 IBLA 261 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case

MINING CLAIMS--Continued

ABANDONMENT--Continued

has not carried the burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Peter Laczay, 65 IBLA 291 (July 13, 1982)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Herschel Knapp, 65 IBLA 314 (July 14, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Olive M. Stigland, 65 IBLA 363 (July 20, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Harvey A. Wolcott et al., 65 IBLA 369 (July 20, 1982)

Elaine Marianne McLevie, 67 IBLA 220 (Sept. 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

Where a mining claim was located in Nov. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (Aug. 10, 1982)

ABANDONMENT--Continued

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the *Federal Register* notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George D. Booker et al., 66 IBLA 168 (Aug. 12, 1982)

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Where a mining claim was located in Oct. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Roger Ferguson, Sybil B. Ferguson, 67 IBLA 284 (Sept. 29, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Norman Piltz, 61 IBLA 113 (Jan. 6, 1982)

If the owner of a mining claim located on or before Oct. 21, 1976, recorded his claim with BLM in 1977, he was required under 43 CFR 3833.2-1(a) to file a copy of evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30, 1978. Because this particular filing is not required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), a decision declaring such a claim abandoned and void for failure to file the required document will be reversed where the owner of the claim complied with the statutory filing requirements and subsequently filed the document required by the regulation.

W. Verne Kight, Eva B. Kight (On Reconsideration), 61 IBLA 216 (Jan. 28, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Donald B. Atkins, 61 IBLA 364 (Feb. 16, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

Vernon J. Nell, 66 IBLA 171 (Aug. 12, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Douglas M. Overman, 62 IBLA 397 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

The mailing of evidence of annual assessment work after the due date does not constitute compliance with the requirements of the statute.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in a mining claim being declared abandoned and void.

Oregon Portland Cement Co., 66 IBLA 204 (Aug. 13, 1982)

The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

COMMON VARIETIES OF MINERALS

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Special Value

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place or by reduced cost or overhead so that the profit to the claimant would be substantially more.

A deposit of slate and graywacke cannot be determined to be an uncommon variety of mineral solely on the basis of its accessibility or proximity to market (both factors of location), even though such factors may give the deposit a competitive advantage, as they are not unique properties inherent in the deposit but only extrinsic factors.

United States v. Sherman C. Smith, Larry L. Smith, 66 IBLA 182 (Aug. 13, 1982)

Unique Property

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place or by reduced cost or overhead so that the profit to the claimant would be substantially more.

A deposit of slate and graywacke cannot be determined to be an uncommon variety of mineral solely on the basis of its accessibility or proximity to market (both factors of location), even though such factors may give the deposit a competitive advantage, as they are not unique properties inherent in the deposit but only extrinsic factors.

United States v. Sherman C. Smith, Larry L. Smith, 66 IBLA 182 (Aug. 13, 1982)

CONTESTS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor D. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima

MINING CLAIMS--Continued

CONTESTS--Continued

facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 14 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claims. This evidence gives rise to a presumption that the mineral in the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

When the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestee to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery.

Even if the Government has failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery has not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, *i.e.*, where circumstances have placed a substantial constraint upon his ability to obtain or submit samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael J. Beckley, [illegible] A. Beckley, 66 IBLA 357 (Aug. 27, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert B. Lara, 67 IBLA 46 (Sept. 4, 1982)

MINING CLAIMS--Continued

CONTESTS--Continued

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

DETERMINATION OF VALIDITY

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

[illegible], 61 IBLA 297 (Feb. 3, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

[illegible], 62 IBLA 283 (Mar. 15, 1982)

[illegible], 65 IBLA 357 (July 20, 1982)

[illegible], Jr., et al., 65 IBLA 387 (July 23, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montagert et al., 63 IBLA 35 (Mar. 30, 1982)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" *does* relate back to the date of the filing of the original notice of location, so that the filer *does* receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, *as amended*, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

When the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery.

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

Lack of development alone may support a finding of invalidity, unless there is direct evidence in the record that the material from the mine is marketable, i.e., that the mineral can be mined, removed, and marketed at a profit.

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

The validity of a mining claim cannot depend on the inference of richer ore or wider veins than those which are already physically exposed.

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

DISCOVERY

Generally

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met generally where it appears that mineralization on the claim has been physically exposed and evidence shows the mineral deposit is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montarest et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 366 (Apr. 30, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Where a qualified mineral examiner testifies that he examined and took samples from the only exposed areas on contested mining claims, that his examination and the assay of those samples revealed no mineralization, and that he was of the opinion that a prudent person would not spend time, effort, and money believing he had a reasonable prospect of developing a valuable mine, a prima facie case of invalidity of the claims is established. Where the claimant submits unverified reports of mineralization and testifies that little work and no sampling have been done on the claims since he restaked them, the prima facie showing is not rebutted, and the claims are properly declared invalid.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

Lack of development alone may support a finding of invalidity, unless there is direct evidence in the record that the material from the mine is marketable, *i.e.*, that the mineral can be mined, removed, and marketed at a profit.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert P. Lara, 67 IBLA 48 (Sept. 9, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Geologic Inference

The validity of a mining claim cannot depend on the inference of richer ore or wider veins than those which are already physically exposed.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Marketability

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Grovenor D. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery,

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Although a favorable showing of actual sales may demonstrate marketability, lack of sales is not necessarily conclusive on the issue of marketability. Lack of sales may be overcome, after all the evidence is heard, by a preponderance of the evidence showing that a prudent person could have extracted and marketed the mineral profitably.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Towne and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

MINING CLAIMS--Continued

HEARINGS--Continued

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, *i.e.*, where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael L. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ralph Pessott, 61 IBLA 116 (Jan. 6, 1982)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert E. Rudic, Verne Andrews, 61 IBLA 220 (Jan. 26, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 26, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Lloyd A. Person, 62 IBLA 243 (Mar. 15, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Pellascio et al., 63 IBLA 214 (Apr. 12, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Warren, Sr., et al., 65 IBLA 387 (July 23, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Ronald W. Ramm, 67 IBLA 32 (Sept. 7, 1982)

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

The lands underlying a nonnavigable lake are not available for the location of mining claims where the uplands have been patented without reservation of minerals to the United States or where the uplands in the public domain have been appropriated.

Lawrence F. Bags et al., 67 IBLA 239 (Sept. 24, 1982)

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

LOCATION

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

Where a mining claimant seeks to amend various mining claims, there must be some way to ascertain which claims, in fact, are being amended. Where it is impossible to identify specific claims with specific amendments, the amendment can be of no force or effect.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald B. Bannon, 63 IBLA 115 (Apr. 2, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" *does* relate back to the date of the filing of the original notice of location, so that the filer *does* receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location,

and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

MARKETABILITY

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams,
65 IBLA 346 (July 16, 1982)

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael C. Beckley, Virginia B. Beckley,
66 IBLA 357 (Aug. 27, 1982)

MILLSITES

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael C. Beckley, Virginia B. Beckley,
66 IBLA 357 (Aug. 27, 1982)

MINING CLAIMS--Continued

MINERAL LANDS

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

PATENT

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

PLACER CLAIMS

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

POWERSITE LANDS

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

RECORDATION

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp., et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William F. F. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver N. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Dicy Dimick, Floyd Vipond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Bull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Manuel H. Hernandez, 65 IBLA 201 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 207 (July 13, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Victor Hejsted, 66 IBLA 31 (July 23, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William H. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald H. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Fassie, 64 IBLA 137 (May 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Loy Yohne, 62 IBLA 27 (Feb. 24, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempfler, 62 IBLA 32 (Feb. 24, 1982)

James R. Borner, 67 IBLA 223 (Sept. 23, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Ray M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Ostran, 64 IBLA 21 (May 6, 1982)

Vester Farley, 64 IBLA 86 (May 12, 1982)

Herbert A. Borison, 64 IBLA 89 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer P. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Clive M. Stirland, 65 IBLA 363 (July 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald E. Bannon, 63 IBLA 115 (Apr. 2, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 129 (Apr. 5, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambrix, 63 IBLA 170 (Apr. 8, 1982)

Cruz M. Chaves, 67 IBLA 270 (Sept. 27, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Behner III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

Where a mining claimant has been excused from the performance of annual assessment work on claims within a unit of the National Park Service, notice of intention to hold claims must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed under the provisions of sec. 314 of the Federal Land Policy and Management Act of 1976. Depositing a document in the mails does not constitute filing.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment

MINING CLAIMS--Continued

RECORDATION--Continued

work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Verchota, 64 IBLA 23 (May 6, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the reqired instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

M. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Raymond L. Dinwiddie, 64 IBLA 334 (June 10, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer

MINING CLAIMS--Continued

RECORDATION--Continued

any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Steve Kosanke, 66 IBLA 46 (July 27, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

W. A. Shepherd, Viola M. Shepherd, 55 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM on Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Elmer Transtrum, 65 IBLA 285 (July 13, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where

MINING CLAIMS--Continued

RECORDATION--Continued

the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Robert A. Sandstedt, Priley Stemveld, 65 IBLA 367 (July 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

James T. Hackworth, 66 IBLA 132 (Aug. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Geoffrey L. Warren, 66 IBLA 165 (Aug. 11, 1982)

A. L. Stutenroth, 67 IBLA 6 (Sept. 1, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Vernon J. Bell, 66 IBLA 171 (Aug. 12, 1982)

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Carl Eichenhofer, 66 IBLA 226 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Wade McNeil, Flora McNeil, 66 IBLA 228 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. B. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Apr. 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

James R. Braymen, 67 IBLA 138 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976 and 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. Failure to file the required instrument within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Robert Brennan, 67 IBLA 218 (Sept. 23, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

John Andrew Batok, 67 IBLA 272 (Sept. 28, 1982)

RELOCATION

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" *does* relate back to the date of the filing of the original notice of location, so that the filer *does* receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel R. Barr, Sr., 65 IBLA 167 (June 29, 1982)

MINING CLAIMS--Continued

RELOCATION--Continued

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. B. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

SPECIFIC MINERAL(S) INVOLVED

Clay

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

United States v. Kaycee Bentonite Corp., et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Gold

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED--Continued

Gold--Continued

Where contestees present uncontroverted evidence showing that, over a period of 3 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

SURFACE USES

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

WITHDRAWN LAND

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert E. Rudis, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James M. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Elmer G. Thomas et al., 66 IBLA 92 (July 30, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Ronald W. Ramm, 67 IBLA 32 (Sept. 7, 1982)

MINING CLAIMS RIGHTS RESTORATION ACT

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

MINING OCCUPANCY ACT

GENERALLY

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, *as amended*, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE

The Mining Claims Occupancy Act, 30 U.S.C. § 701 (1976), only requires that valuable improvements on an unpatented mining claim constitute *a* principal place of residence for a qualified applicant, not that such be *the* principal place of residence of the applicant.

Jack J. and LaVonn Curtis, 63 IBLA 306 (Apr. 26, 1982)

MISTAKES

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

Dolores M. Lisman, 67 IBLA 72 (Sept. 10, 1982)

NATIONAL PARK SERVICE

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the *Federal Register* notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907

NATIONAL PARK SERVICE--Continued

(1976), conclusively presumed to be abandoned and void.

George C. Becker et al., 66 IBLA 168 (Aug. 12, 1982)

NATIONAL PARK SERVICE AREAS

LAND

Mining

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

NAVIGABLE WATERS

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph E. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

NOTICE

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Clay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 220 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl B. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha B. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles I. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

NOTICE--Continued

GENERALLY--Continued

M. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

NOTICE--Continued

GENERALLY--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Emery Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

OIL AND GAS LEASES

GENERALLY

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur E. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur R. Frank, 61 IBLA 202 (Jan. 26, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Finkles, 63 IBLA 81 (Mar. 30, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Oil and gas leases may be acquired and held only by citizens of the United States, associations of citizens (including partnerships), corporations, and municipalities. The Mineral Leasing Act does not prohibit the creation of joint tenancies when oil and gas leases are issued. Where the two offerors are designated on a competitive oil and gas lease bid as "Turner C. Smith, Jr. and Signe E. Smith, husband and wife, as Joint Tenants, DBA Turner Smith & Associates" and the bid is signed by each person individually, the bid is acceptable in that form since it is possible to determine the full names of the offerors.

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe E. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

John E. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

L. E. Blake, 67 IBLA 103 (Sept. 15, 1982)

ACQUIRED LANDS LEASES

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Machalk Production, Inc., 64 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Emery Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

R. L. Mulholland, 67 IBLA 14 (Sept. 3, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

ACREAGE LIMITATIONS

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS

Generally

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Weed, 61 IBLA 213 (Jan. 28, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in *Lola I. Doe*, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Erwin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlin D. Hass, 61 IBLA 338 (Feb. 10, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Maas, 62 IBLA 25 (Feb. 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William H. Burruss, 62 IBLA 40 (Feb. 24, 1982)

Jack T. Thompson, 66 IBLA 273 (Aug. 17, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93
89 I.D. 82
(Feb. 26, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack P. Mosely, Charles S. Pertz, 62 IBLA 220 (Mar. 10, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

When land has previously been included in a lease that has terminated, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system under 43 CFR 3112.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert D. Andahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Rood, 62 IBLA 391 (Mar. 24, 1982)

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Robert W. Byers, 63 IBLA 100 (Mar. 31, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James E. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sonsini, 64 IBLA 83 (May 10, 1982)

John Gabr, 65 IBLA 268 (July 9, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

"waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettigrew, 64 IBLA 336 (June 10, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 24, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard R. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur M. Kuether, 65 IBLA 184 (June 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

Bachalk Production, Inc., 65 IBLA 271 (July 12, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Under 43 CFR 3112.4-1(a), a prospective lessee (*i.e.*, one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered. An incomplete application must be rejected.

Franz S. Stieglmayr, 66 IBLA 276 (Aug. 18, 1982)

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

An oil and gas lease application, form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Carol V. Miller, 66 IBLA 394 (Aug. 31, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hercules (A Partnership) and Gemini (A Partnership), 67 IBLA 151 (Sept. 20, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

A simultaneous oil and gas lease application which is not signed in the space provided on the card must be rejected.

Wilfred Plomis, 67 IBLA 237 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Amendments

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final Departmental decision, but with priority of filing only as of the date the corrective information was filed.

John L. Messinger, James M. Chudnow, 65 IBLA 20 (June 21, 1982)

Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Weed, 61 IBLA 213 (Jan. 28, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack E. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert B. Andahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 [illegible]A 100 (Mar. 31, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sonsini, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Where an oil and gas lease application is filed through a leasing service in the BLM simultaneous filing program bearing a serial number as an ostensible reference to a leasing service's qualifications, and there is no compliance with the requirements set forth in 43 CFR 3102.2-6(b), the application is properly rejected.

Marjorie E. Woodward, 65 IBLA 138 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard R. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

An application for oil and gas lease filed in the simultaneous leasing program signed on behalf of the applicant by an agent using only her surname was adequate compliance under the regulations in effect in Nov. 1981.

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

Fred H. Garrett (Appellant), Robert E. Deffenbaugh (Respondent), 66 IBLA 42 (July 26, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing a simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

Cliff Mezey (On Reconsideration), 66 IBLA 176 (Aug. 12, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered. An incomplete application must be rejected.

Franz S. Stieglmayr, 66 IBLA 276 (Aug. 18, 1982)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

The Board will affirm a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first-drawn applicant did comply.

Marilyn S. Watson, 67 IBLA 67 (Sept. 10, 1982)

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

Raymond E. Steitz, 67 IBLA 173 (Sept. 21, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Descriptions

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James E. Chudnow, Laurent A. Giesbert, 62 IBLA 35 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Parulak, 63 IBLA 16 (Mar. 26, 1982)

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, i.e., a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where BLM issues an oil and gas lease pursuant to an oil and gas lease offer which includes a land description which meets the requirements of 43 CFR 3101.1-4(a), the offer is not defective and BLM may properly reject a subsequent offer for the leased lands.

Irwin Wall, 66 IBLA 130 (Aug. 10, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

Drawings

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur F. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur R. Frank, 61 IBLA 202 (Jan. 26, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Richard M. Sporcic, 62 IBLA 159 (Mar. 8, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

The language in 43 CFR 3112.6-1(c)(4), which prohibits separate filings by a trustee on behalf of two or more beneficiaries on the same parcel, is a per se prohibition and means that a trustee for two or more discrete trusts may file application on behalf of only one trust for any one parcel.

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents to the sibling survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease applications by more than one such trust for the same parcel is therefore violative of 43 CFR 3112.6-1(c), which prohibits the filing of multiple offers.

Bruce A. Blakemore Estate Trust and James E. Blakemore Trust, 62 IBLA 336 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

ESMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where individuals who are officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, and where the corporation has filed no applications, cancellation by BLM of leases awarded to such individuals pursuant to those drawings is improper when the individuals establish that there was no breach of their fiduciary duty to the corporation creating a corporate interest in the individual applications.

Where individual officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, but the corporation has not filed any applications, rejection of the applications by BLM is improper when the individuals establish that there was corporate authorization for such individual filings; that any prior assignments to the corporation of Federal oil and gas leases previously acquired through the simultaneous system were motivated by personal financial and business considerations, rather than by corporate obligation; and that no arrangement, agreement, scheme, or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

plan giving the corporation an interest in any of the applications ever existed.

Lawrence C. Harris et al., 63 IBLA 132 (Apr. 5, 1982)
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An applicant for a simultaneously filed oil and gas lease is bound to conform to changes in application procedures duly promulgated by publication in the *Federal Register* and referred to in appropriate notices prior to the filing; and the fact that numerous applications were required to be returned to the applicant and to others because they were on the wrong form does not render the drawing invalid as to the remaining applicants.

Ronald C. Agel, 64 IBLA 1 (May 3, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Charles V. Neff, 64 IBLA 234 (May 27, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirandel Investment Research, 65 IBLA 111 (June 24, 1982)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

Richland Resources, 66 IBLA 68 (July 29, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren P. Hass, 66 IBLA 107 (Aug. 4, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth C. Anne, 66 IBLA 126 (Aug. 10, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

John E. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Pursuant to 43 CFR 3112.2-1(b), an application not signed by the applicant must bear the holographic signature of the agent. In the case of a corporate agent, this requires the signature of the person signing on behalf of the corporation.

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

An oil and gas lease application, form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Carol F. Miller, 66 IBLA 394 (Aug. 31, 1982)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hercules (A Partnership) and Gemini (A Partnership), 67 IBLA 151 (Sept. 20, 1982)

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Walter Adoskus, 67 IBLA 177 (Sept. 21, 1982)

A simultaneous oil and gas lease application which is not signed in the space provided on the card must be rejected.

Wilfred Plomis, 67 IBLA 237 (Sept. 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Herbert N. Winston, 61 IBLA 199 (Jan. 26, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlip E. Hass, 61 IBLA 338 (Feb. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William H. Burruss, 62 IBLA 40 (Feb. 24, 1982)

Jack T. Thompson, 66 IBLA 273 (Aug. 17, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert R. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 31! .6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Pinkles, 63 IBLA 81 (Mar. 30, 1982)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sonsini, 64 IBLA 83 (May 10, 1982)

John Gabr, 65 IBLA 268 (July 9, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard P. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur N. Ruether, 65 IBLA 184 (June 29, 1982)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

Richland Resources, 66 IBLA 68 (July 29, 1982)

Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicants.

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 96 (Aug. 4, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren E. Haas, 66 IBLA 107 (Aug. 4, 1982)

Under 43 CFR 3112.6-1(a), a prospective lessee (i.e., one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing a simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

Cliff Mazer (On Reconsideration), 66 IBLA 178 (Aug. 12, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 264 (Aug. 17, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

Brian E. Haas, 66 IBLA 353 (Aug. 27, 1982)

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

The Board will affirm a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first-drawn applicant did comply.

Rosalind C. Watson, 67 IBLA 67 (Sept. 10, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

Raymond R. Streitz, 67 IBLA 173 (Sept. 21, 1982)

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

Walter Alvarez, 67 IBLA 177 (Sept. 21, 1982)

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

James R. Chudnow, 67 IBLA 193 (Sept. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

640-acre Limitation

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Where a noncompetitive offer to lease covers more than 640 acres of land available for leasing at the time the offer is made, the offeror has complied with 43 CFR 3110.1-3(a), even though some of the land becomes unavailable for noncompetitive leasing before lease issuance and the remaining land involves less than 640 acres.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

No over-the-counter offer for a noncompetitive oil and gas lease on the public domain may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation (or that such plan has been approved as to form by the Director, Geological Survey), or where the land is surrounded by lands not available for leasing; where these circumstances do not exist, an offer for less than 640 acres is properly rejected.

James M. Chudnow, 65 IBLA 64 (June 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

An oil and gas lease offer to lease less than 640 acres which adjoins land available for leasing is properly rejected.

James M. Chudnow, 66 IBLA 372 (Aug. 27, 1982)

BLM may properly reject a noncompetitive oil and gas lease offer for less than 640 acres where the land is not within an approved unit or cooperative plan of operation or surrounded by lands unavailable for leasing.

Robert L. Clay, 67 IBLA 115 (Sept. 15, 1982)

BLM may not reject an oil and gas lease offer, as violating the 640-acre rule embodied in 43 CFR 3110.1-3(a), where a disqualifying portion of the land sought was covered by an outstanding oil and gas lease at the time the offer was filed but this fact was not noted in the appropriate public land records.

James M. Chudnow, 67 IBLA 143 (Sept. 16, 1982)

Sole Party in Interest

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement signed by himself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Richard F. Storcic, 62 IBLA 159 (Mar. 8, 1982)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Diane M. Berndt, Richard W. Myers, 62 IBLA 268 (Mar. 16, 1982)

Bob Reid, 64 IBLA 17 (May 4, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Dove, 65 IBLA 340 (July 16, 1982)

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe D. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

ASSIGNMENTS OR TRANSFERS

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee to hold Federal oil and gas leases or lack of sufficient bond. However, the failure to submit three manually executed assignment forms as required by 43 CFR 3106.2-2, is a curable defect.

North Central Oil Corp., 62 IBLA 38 (Feb. 24, 1982)

Where a proposed assignment has been filed with BLM but has not yet been approved, the original lessee of an oil and gas lease is the holder of record.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

A unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. Longstanding Departmental policy requires withholding action to either approve or reject the assignment until the dispute between the parties is resolved through agreement or litigation.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

Where the Bureau of Land Management has denied approval of an assignment for failure to file three completed and manually signed copies in the appropriate BLM office and this Department is made aware of private litigation between the assignor and assignee as to the validity or effect of the assignment, the Department will suspend action on any assignment or request for permission to drill until the parties resolve the controversy by agreement or by litigation.

The July Corp., 66 IBLA 20 (July 22, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A bona fide purchaser must have acquired his interest in an oil and gas lease in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent man on inquiry which if followed with reasonable diligence would lead to discovery of defects in title or equitable rights of others affecting the lease.

The knowledge of the assignee's agent and/or employee acting for the principal in connection with obtaining the lease is generally attributable to the assignee in determining whether the assignee qualifies as a bona fide purchaser.

Payment of valuable consideration prior to knowledge or notice of a superior right is a necessary element of bona fide purchaser status.

Richard W. Eckels, 62 IBLA 1 (Feb. 22, 1982)

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. M. Hunter, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there was no formal protest against the lease pending, provided that the purchaser of the lease pending had no actual knowledge of any defect in the underlying offer.

David A. Reese et al., 65 IBLA 12 (June 21, 1982)

The protection afforded a bona fide purchaser of an oil and gas lease applies only where consideration has been paid. An unperformed obligation to pay the assignor is not generally sufficient value. Receipt by the purchaser of notice that a lease is subject to cancellation prior to payment of the obligation to the assignor which the purchaser has assumed will bar bona fide purchaser status even if the assignee thereafter pays the obligation.

Richard W. Eckels (On Reconsideration), 65 IBLA 76 (June 23, 1982)

CANCELLATION

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Root et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Coupey, 64 IBLA 146 (May 24, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

R. L. Mulholland, 67 IBLA 14 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first-qualified applicant.

Irvin Wall, 67 IBLA 301 (Sept. 30, 1982)

COMMUNITIZATION AGREEMENTS

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co., et al. (Appellants), Shell Oil Co. (Appellees), 67 IBLA 80 (Sept. 10, 1982)

COMPENSATORY ROYALTY

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

COMPETITIVE LEASES

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982)
89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James E. Chudnoy, 63 IBLA 369 (Apr. 30, 1982)

Oil and gas leases may be acquired and held only by citizens of the United States, associations of citizens (including partnerships), corporations, and municipalities. The Mineral Leasing Act does not prohibit the creation of joint tenancies when oil and gas leases are issued. Where the two offerors are designated on a competitive oil and gas lease bid as "Turner C. Smith, Jr. and Signe D. Smith, husband and wife, as Joint Tenants, DBA Turner Smith & Associates" and the bid is signed by each person individually, the bid is acceptable in that form since it is possible to determine the full names of the offerors.

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe D. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

[illegible]-Hendrick, 66 IBLA 84 (July 29, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

Where the notice of a competitive sale of oil and gas leases clearly provided that the leases would be subject to a "No Surface Occupancy" stipulation, by making a bid for the indicated parcel, the bidder was bound to accept the stipulation.

Where, through inadvertence, there was failure to include the "No Surface Occupancy" stipulation recited in the sale notice with the executed lease, BLM is not estopped to require compliance with the omitted stipulation when the omission is discovered after issuance of the lease.

Anadarko Production Co., 66 IBLA 174 (Aug. 12, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration of the bid.

Viersen & Cochran, 67 IBLA 1 (Sept. 1, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

L. B. Blake, 67 IBLA 103 (Sept. 15, 1982)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Rachalk Production, Inc., 66 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Beery Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

DESCRIPTION OF LAND

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Gierbert, 62 IBLA 19 (Feb. 24, 1982)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Karslak, 63 IBLA 16 (Mar. 26, 1982)

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed because no change has been made in the land actually covered by the lease.

Max A. Kent et al., 65 IBLA 192 (June 29, 1982)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where BLM issues an oil and gas lease pursuant to an oil and gas lease offer which includes a land description which meets the requirements of 43 CFR 3101.1-4(a), the offer is not defective and BLM may properly reject a subsequent offer for the leased lands.

Irwin Wall, 66 IBLA 130 (Aug. 10, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

OIL AND GAS LEASES--Continued

DISCOVERY

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

DISCRETION TO LEASE

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Under sec. 17 of the Mineral Leasing Act of 1920, *as amended*, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 51 (Mar. 30, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

lessee be barred from surface occupancy of the entire leasehold.

Marta E. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

James M. Chudnow, 63 IBLA 309 (Apr. 27, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has consolidated its holdings in order to manage the lands for recreational, scenic, and wildlife values, which BLM determines oil and gas leasing would damage, rejection of the lease offer will be affirmed.

Connie Hull, 63 IBLA 317 (Apr. 27, 1982)

Great White, Inc., 65 IBLA 207 (June 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettijrew, 64 IBLA 336 (June 10, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

Bachalk Production, Inc., 65 IBLA 271 (July 12, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has accomplished an oil and gas environmental analysis which supports the rational conclusion that leasing would be detrimental to its efforts to manage the lands for recreational, scenic, and wildlife values, rejection of the lease offer will be affirmed.

Great White, Inc., 65 IBLA 310 (July 13, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Harris-Headrick, 66 IBLA 84 (July 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation.

Thomas Connolly et al., 66 IBLA 265 (Aug. 17, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Vierson & Cochran, 67 IBLA 1 (Sept. 1, 1982)

L. E. Blake, 67 IBLA 103 (Sept. 15, 1982)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

DRAINAGE

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

DRILLING

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

EXTENSIONS

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 193 (May 24, 1982)

FIRST-QUALIFIED APPLICANT

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Pattie et al., 61 IBLA 131 (Jan. 15, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Azube Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Dessar, 63 IBLA 217 (Apr. 13, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan C. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cliff Oil, Inc., 64 IBLA 156 (May 25, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 1, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Firindel Investment Research, 65 IBLA 111 (June 24, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren B. Haas, 66 IBLA 107 (Aug. 4, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Leo E. Sam, 67 IBLA 36 (Sept. 8, 1982)

FUTURE AND FRACTIONAL INTEREST LEASES

Where the Government owns a 50 percent mineral interest in certain acquired lands and subsequently obtains the remaining 50 percent mineral interest in those lands at a time in which the original interest is not under lease, the Government may not thereafter issue a fractional interest lease for these lands.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

KNOWN GEOLOGIC STRUCTURE

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure (KGS) of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. Where appellant provides technical data to support his contention and the record contains only a conclusory determination that the land is within a KGS, the Board may call for further substantiation of the basis for the KGS finding in light of appellant's data.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A noncompetitive oil and gas lease application must be rejected where at any time prior to the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Lida E. Drumheller, 63 IBLA 290 (Apr. 22, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Buslow, Jr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

LANDS SUBJECT TO

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The fact that oil and gas leases may have been wrongly issued in the past for lands which were not available for leasing does not militate in favor of reenacting the wrong for the sake of consistency or to avoid discriminatory treatment of a subsequent offeror.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

W. E. Haley, 62 IBLA 294 (Mar. 16, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Reed, 62 IBLA 391 (Mar. 24, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James B. Chadnow, 63 IBLA 369 (Apr. 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Coupey, 64 IBLA 146 (May 24, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

Land included in an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected whether or not the outstanding lease was properly issued as to that land.

James M. Chudnow, 67 IBLA 143 (Sept. 16, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havoco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Coupey, 64 IBLA 146 (May 24, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren E. Haas, 66 IBLA 107 (Aug. 4, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (*i.e.*, one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Leo P. Sas, 67 IBLA 36 (Sept. 8, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Energy Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first-qualified applicant.

Irvin Wall, 67 IBLA 301 (Sept. 30, 1982)

OVERRIDING ROYALTIES

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 20, 1982)

Ervin Staacke et al., 62 IBLA 278 (Feb. 16, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 20, 1982)

OIL AND GAS LEASES--Continued

OVERRIDING ROYALTIES--Continued

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

PATENTED OR ENTERED LANDS

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

PRODUCTION

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

REINSTATEMENT

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas M. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James P. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

inadvertent misplacement of office records during the changeover in his office location.

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

The Secretary is without authority under existing law to reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due unless such rental is paid or tendered within 20 days thereafter.

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1976) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226(e) (1976) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 64 IBLA 119 (May 19, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Emerson L. Muse, 64 IBLA 121 (May 19, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, *i.e.*, due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

J. B. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due or by a delay in receiving assignment forms which prevented

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

shifting the responsibility for lease payment prior to the anniversary date.

Alminex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

Jack J. Grynberg, 64 IBLA 354 (June 15, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

Zions First National Bank, 67 IBLA 43 (Sept. 8, 1982)

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

that reasonable diligence was exercised. Mailing payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

Kristie B. Cobb, 67 IBLA 59 (Sept. 9, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, *i.e.*, due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental after it was due does not constitute reasonable diligence. Late payment is not justified by the fact that the lessee did not receive a courtesy notice from the Bureau of the Land Management, or the fact that he received erroneous advice from BLM employees.

Peter E. Buehler, 67 IBLA 242 (Sept. 24, 1982)

RELINQUISHMENTS

Where a lessee relinquishes an oil and gas lease, he is exercising a right given to him by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. M. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

RENTALS

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul D. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 15 (Feb. 24, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Romola A. Jarett, 63 IBLA 228 (Apr. 16, 1982)
89 I.D. 207

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 64 IBLA 119 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Alminex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

Kristie H. Cobb, 67 IBLA 59 (Sept. 9, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is

OIL AND GAS LEASES--Continued

RENTALS--Continued

required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Peter R. Buehler, 67 IBLA 242 (Sept. 24, 1982)

RIGHTS-OF-WAY LEASES

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

ROYALTIES

A request for refund, repayment, or crediting of excess payments against future payments due under 43 U.S.C. § 1339 (1976) must be made as the limitation in the statute provides, within 2 years from the date such excess payments are actually made.

Where a Geological Survey audit revealing that a lessee has underpaid royalties on certain leases is challenged by the lessee who alleges that overpayments were also made on the same leases during the audit period, and where Geological Survey has assessed the lessee for the underpayments, but not considered the merits of the lessee's allegations with respect to overpayments, the case will be remanded to Geological Survey to determine whether offsets of payments would have been proper.

Mobil Oil Co., 65 IBLA 295 (July 13, 1982)

STIPULATIONS

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta E. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havcco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice,

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OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Where the notice of a competitive sale of oil and gas leases clearly provided that the leases would be subject to a "No Surface Occupancy" stipulation, by making a bid for the indicated parcel, the bidder was bound to accept the stipulation.

Where, through inadvertence, there was failure to include the "No Surface Occupancy" stipulation recited in the sale notice with the executed lease, BLM is not estopped to require compliance with the omitted stipulation when the omission is discovered after issuance of the lease.

Anadarko Production Co., 66 IBLA 174 (Aug. 12, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

Applicants for oil and gas leases may be required to accept a stipulation as reasonable and in the public interest and in accord with national and departmental policy, which stipulation requires lessees to engage the services of a qualified professional archaeologist to conduct a survey of the areas to be leased for evidences of archaeological or historic sites or materials with the cost to be borne by the lessees.

Altex Oil Corp., 67 IBLA 197 (Sept. 22, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Emery Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

OIL AND GAS LEASES--Continued

SUSPENSIONS

The applicable statute, 30 U.S.C. § 184(j) (1976), and regulation, 43 CFR 3108.3(e), authorize the granting of a suspension of lease term and obligation to pay rental where, during a proceeding described therein, a party files with the Secretary a waiver of his rights under the lease, including particularly, where applicable, rights to drill and to assign.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

TERMINATION

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. at

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas D. Walser, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James M. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 160 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days after the anniversary date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

I. N. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

Peter E. Buehler, 67 IBLA 242 (Sept. 24, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Alpinex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

John G. Swanson, 66 IBLA 200 (Aug. 13, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

Zions First National Bank, 67 IBLA 43 (Sept. 8, 1982)

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

Beatrice B. Cobb, 67 IBLA 59 (Sept. 9, 1982)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982)
89 I.D.

UNIT AND COOPERATIVE AGREEMENTS

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D.

WELL CAPABLE OF PRODUCTION

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

John G. Swanson, 66 IBLA 200 (Aug. 13, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D.

OIL SHALE

WITHDRAWALS

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

TIMBER SALES

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

OUTER CONTINENTAL SHELF LANDS ACT

GEOLOGICAL AND GEOPHYSICAL EXPLORATION

Generally

Under 30 CFR 251.6-3(d), the Director of Geological Survey will require republication of an exploratory test drilling application and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that those changes are significant. Proposed changes to the Department of the Interior's announced Outer Continental Shelf leasing schedule or proposed changes to regulations governing test drilling are not significant changes within the meaning of 30 CFR 251.6-3(d).

Shell Oil Co., 66 IBLA 397 (Aug. 31, 1982) 89 I.D. 429

OIL AND GAS LEASES

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

REFUNDS

Where a Geological Survey audit revealing that a lessee has underpaid royalties on certain leases is challenged by the lessee who alleges that overpayments were also made on the same leases during the audit period, and where Geological Survey has assessed the lessee for the underpayments, but not considered the merits of the lessee's allegations with respect to overpayments, the case will be remanded to Geological Survey to determine whether offsets of payments would have been proper.

Mobil Oil Co., 65 IBLA 295 (July 13, 1982)

UNIT PLANS

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences

OUTER CONTINENTAL SHELF LANDS ACT--Continued

UNIT PLANS--Continued

which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

PATENTS OF PUBLIC LANDS

GENERALLY

A decision holding that title to a tract of land has reverted to the United States will be affirmed where the land together with its improvements was patented to a municipality to be used only for school or other public purposes subject to reversion if the Secretary of the Interior finds the grantee has violated the conditions for a period of 1 year and where the record discloses that grantee has removed the school structures thereon and failed to use the land for 15 years thereafter.

City of Cordova, 62 IBLA 196 (Mar. 9, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn E. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Branitt (On Reconsideration), 65 IBLA 94 (June 23, 1982)

AMENDMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

EFFECT

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Barry J. [illegible], 67 IBLA 100 (Sept. 14, 1982)

RESERVATIONS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

PAYMENTS

GENERALLY

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

PHOSPHATE LEASES AND PERMITS

PERMITS

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

GeoResources, Inc., 67 IBLA 297 (Sept. 29, 1982)

POWERSITE LANDS

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right of reentry provided the United States by sec. 24 of the Federal Power Act, *as amended*.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claims Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

PUBLIC LANDS

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tinsley, 62 IBLA 315 (Mar. 19, 1982)

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 *et seq.* (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

National Forest lands are not "available public... lands." As such, they are not intended by Congress to be included within the Paiute's proposed reservation enlargement plan under the Paiute Restoration Act.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982)
89 I.D. 403

ADMINISTRATION

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

CLASSIFICATION

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Milalee M. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

DISPOSALS OF

Generally

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 *et seq.* (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982)
89 I.D. 403

PUBLIC LANDS--Continued

LEASES AND PERMITS

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

RIPARIAN RIGHTS

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

SPECIAL USE PERMITS

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

PUBLIC RECORDS

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices

PUBLIC RECORDS--Continued

of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

PUBLIC SALES

APPLICATIONS

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

W. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

SALES UNDER SPECIAL STATUTES

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

W. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

RAILROAD GRANT LANDS

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489 *as amended* by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

One will not be considered an innocent purchaser for value under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), when the evidence presented at a hearing supports a finding that the lands in question were of known mineral character on the date of the original sale by the railroad, and the purchaser should have known at the time of purchase that such lands were excepted from the grant to the railroad.

United States v. Southern Pacific Transportation Co. & Donald K. Lee, 66 IBLA 191 (Aug. 13, 1982)

RECLAMATION HOMESTEADS

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

RECLAMATION LANDS

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

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Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

RECLAMATION LANDS--Continued

GENERALLY--Continued

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

REGULATIONS

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Nukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoojen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis K. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

REGULATIONS--Continued

GENERALLY--Continued

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Reirdon Doreaus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Connevichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

Martin Exploration Management Corp., 63 IBLA 267 (Apr. 22, 1982)

REGULATIONS--Continued

GENERALLY--Continued

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the *Federal Register* or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

APPLICABILITY

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

REGULATIONS--Continued

APPLICABILITY--Continued

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

Brian D. Haas, 66 IBLA 353 (Aug. 27, 1982)

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

BINDING ON THE SECRETARY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Once a regulation is adopted by the Department, and so long as it remains extant, the Secretary and his representatives are bound by it and it has the force and effect of law.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations),
9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Once a regulation is adopted by the Department, and so long as it remains extant, the Secretary and his representatives are bound by it and it has the force and effect of law.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations),
9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

REGULATIONS--Continued

FORCE AND EFFECT AS LAW--Continued

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp., et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

INTERPRETATION

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 256 (Sept. 27, 1982)

REINSTATEMENT

GENERALLY

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

RENT

An upward amenity adjustment of 2 percent to basic rental rate is correctly calculated in accordance with the economically homogeneous area survey method, FPMR 114-52.303(b), when the number of amenities present for Government-furnished quarters is one more than the average number of amenities present in the private rental survey of comparable private housing in an economically homogeneous area in which the Government rental quarters are located.

Appeal of Mary T. Foss, 5 OHA 15 (Sept. 30, 1982)

RES JUDICATA

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

RIGHTS-OF-WAY

GENERALLY

Where a subdivision builder is granted a right-of-way for an access road and bridge pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), with the understanding that a county or town will take over the right-of-way, but an assignment to the county or town has not been approved by BLM, the builder is liable for the rental, and the exemption from payment of rental for a local government under 43 CFR 2803.1-2(c)(1) does not apply.

Carpentry Unlimited, Inc., 62 IBLA 203 (Mar. 9, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

ACT OF FEBRUARY 15, 1901

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

ACT OF FEBRUARY 25, 1920

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

RIGHTS-OF-WAY--Continued

APPLICATIONS

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

CANCELLATION

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

CONDITIONS AND LIMITATIONS

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

In granting a right-of-way for a domestic water pipeline pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable. However, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a) where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed.

Jean Mountaingrove, Ruth Mountaingrove, 67 IBLA 154 (Sept. 20, 1982)

FEDERAL HIGHWAY ACT

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C.

§ 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

An application by a state highway department for a material site right-of-way on public land is properly denied where the applicant fails to demonstrate that the material is reasonably necessary for the construction or maintenance of a highway or where such disposition would not be consistent with other public purposes as determined by the Bureau of Land Management. Where the application is denied on the basis of a determination that it would preempt the public's only available source of cinders within 40 miles and appellant contradicts this by identifying other public sources, the decision rejecting the application will be set aside and the case remanded for further consideration of alternatives that would meet the needs of the applicant without sacrificing other public purposes.

Utah Dept. of Transportation, 62 IBLA 176 (Mar. 8, 1982)

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

OIL AND GAS PIPELINES

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

RULES OF PRACTICE

GENERALLY

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Estate of Isidor Deemar, 63 IBLA 217 (Apr. 13, 1982)

APPEALS

Generally

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was applied improperly.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

Answers

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

failures due to negligence in the operation of the irrigation system by the Government or its agents.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982) 89 I.D.

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. M. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The Board denies a Government motion to dismiss an appeal predicated upon the ground, *inter alia*, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

Utah Wilderness Ass'n, 65 IBLA 219 (July 9, 1982)

The Board of Land Appeals will reverse a determination of the Geological Survey dismissing in part an appeal for failure to file timely an appeal within the time required by 30 CFR Part 290, from a letter denying refunds of alleged royalty overpayments in which no right of appeal was indicated, and which could not fairly be held to have put appellant on notice that a final determination with right of appeal was intended.

Mobil Oil Co., 65 IBLA 295 (July 13, 1982)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

Failure to Appeal

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

Motions

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982)
89 I.D. 233

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982)
89 I.D. 359

Notice of Appeal

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (M-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

C. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

Reconsideration

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982) 89 I.D. 359

Standing to Appeal

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982) 89 I.D. 67

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Baez, 67 IBLA 89 (Sept. 13, 1982)

Statement of Reasons

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D.

Timely Filing

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

The Board of Land Appeals will reverse a determination of the Geological Survey dismissing in part an appeal for failure to file timely an appeal within the time required by 30 CFR Part 290, from a letter denying refunds of alleged royalty overpayments in which no right of appeal was indicated, and which could not fairly be held to have put appellant on notice that a final determination with right of appeal was intended.

Mobil Oil Co., 65 IBLA 295 (July 13, 1982)

EVIDENCE

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bailey Dove, 65 IBLA 340 (July 16, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

The legal presumption that administrative officials have properly discharge their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as a instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

GOVERNMENT CONTESTS

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Arton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or

allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William E. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, *i.e.*, where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael E. Beckley, Virginia E. Beckley, 66 IBLA 357 (Aug. 27, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application

RULES OF PRACTICE--Continued

HEARINGS--Continued

may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

PRIVATE CONTESTS

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

PROTESTS

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

SECRETARY OF THE INTERIOR

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

SECRETARY OF THE INTERIOR--Continued

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

SEGREGATION

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

SODIUM LEASES AND PERMITS

LEASES

Sodium leases, which have a determinate 20-year primary term, are not automatically extended or renewed. The Secretary may renew the lease upon the lessee's timely application for renewal.

The lessee's preference right at the time of renewal under sec. 24 of the Mineral Lands Leasing Act is only to be preferred above other applicants and is not an entitlement, as against the United States, to a renewal lease.

In adjudicating an application for renewal of a sodium lease, the Secretary retains his discretion respecting whether or not to lease. That discretion is limited in that if the decision is made to lease, a preference is extended to the existing lessee who has made timely application.

Existing sodium leases which are beyond their primary term but for which the lessee has made timely application for renewal are continued in force by the provisions of sec. 9 of the Administrative Procedure Act so long as it takes the Department to adjudicate the application.

Sodium Lease Renewals, M-36943 (Mar. 18, 1982)
89 I.D. 173

SPECIAL USE PERMITS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would intereferere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

STATE LAWS

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

STATE SELECTIONS

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

STATUTES

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Filtz, 61 IBLA 113 (Jan. 6, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim S. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl B. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Larry Van Hoogen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Warren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable

STATUTES--Continued

statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

The Department of the Interior, an an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

STATUTORY CONSTRUCTION

GENERALLY

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

IMPLIED REPEALS

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

STOCK-RAISING HOMESTEADS

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

SUBMERGED LANDS

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

ABATEMENT

Generally

Where the record evidence does not support a finding that the recipient of a notice of violation requested an extension of time to abate a violation charged in the notice, prior to OSM's issuance of a cessation order for failure to abate the violation within the time prescribed for abatement, OSM's cessation order is properly upheld against the recipient's claim that conditions at the mine site warranted an extension of the abatement time.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

ADMINISTRATIVE PROCEDURE

Burden of Proof

In a civil penalty proceeding to review an alleged violation of the requirement of 30 CFR 717.17(a)(1) that drainage be passed through a sedimentation pond, OSM bears the ultimate burden of persuasion as to three basic elements of proof: (1) The existence of surface drainage which came into contact with disturbed area; (2) that this drainage did not pass through a sedimentation pond; and (3) that this drainage flowed off the permit area.

The burden of proving facts and circumstances to support an exemption from regulation by OSM rests with the party claiming the exemption.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982) 89 I.D. 378

A prima facie case is made where sufficient evidence is presented to establish the essential facts. It is evidence that will justify but not compel a finding in favor of the one presenting it, unless it is contradicted and overcome by other evidence. How much evidence is required may vary with the nature of the case and with the relative availability of the evidence to the person charged with the burden of establishing the prima facie case.

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982) 89 I.D.

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982) 89 I.D.

Intervention

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding, denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

APPEALS

Generally

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

APPLICABILITY

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D. 313

A coal mine operator cannot avoid coverage under the Act by simply contracting to mine two less-than 2-acre sites for different owners, where the sites are adjacent, the operator treats them as related, and where, taken together, they encompass more than 2 acres.

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Rolling Contractors, 4 IBSMA 156 (Sept. 21, 1982) 89 I.D.

CIVIL PENALTIES

Amount

Under 30 CFR 723.15(b), OSM is required to assess a civil penalty of not less than $750 per day for each day during which a cessation order properly remains outstanding, up to a limit of 30 days.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

EVIDENCE

Generally

An alleged violation of the effluent limitation for iron set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing total iron in discharges from a sedimentation pond to be in excess of 10 milligrams per liter, in the absence of evidence that the Hach test was not properly administered.

D & D Mining Co., 4 IBSMA 113 (Aug. 24, 1982)
89 I.D. 409

A prima facie case is made where sufficient evidence is presented to establish the essential facts. It is evidence that will justify but not compel a finding in favor of the one presenting it, unless it is contradicted and overcome by other evidence. How much evidence is required may vary with the nature of the case and with the relative availability of the evidence to the person charged with the burden of establishing the prima facie case.

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982)
89 I.D.

In a proceeding to review an alleged violation of the effluent limitations for iron and pH expressed in 30 CFR 715.17(a), OSM met its burden of establishing a prima facie case by its evidence that tests of water samples taken at the point of discharge of drainage from the sedimentation pond which received surface drainage from the areas disturbed by the surface coal mining and reclamation operations showed iron and pH levels outside the applicable limits.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D.

HYDROLOGIC SYSTEM PROTECTION

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

The requirement of 30 CFR 717.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventative measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

Under 30 CFR 717.17(a) the regulatory authority may grant exemptions from the requirement that drainage from disturbed area be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D.

ROADS

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

The exemption from regulation provided by the exclusionary language in the definition of "roads" in 30 CFR 710.5 is for the benefit of governmental entities.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 16, 1982)
89 I.D. 313

STEEP-SLOPE MINING

Generally

The special performance standards set forth in 30 CFR 716.2 do not pertain to a mining operation subject to regulation as a mountaintop removal operation in accordance with the provisions of 30 CFR 716.3.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 16, 1982)
89 I.D. 313

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

SUSPENSION OR REVOCATION OF PERMITS

Generally

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding, denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982) 89 I.D. 113

VARIANCES AND EXEMPTIONS

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

Entitlement to an exemption from regulation must be asserted and proven by the one claiming the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D. 313

The burden of proving facts and circumstances to support an exemption from regulation by OSM rests with the party claiming the exemption.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982) 89 I.D. 378

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982) 89 I.D.

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

2-Acre

The area of an access and haul road used by more than one coal mine operator is properly attributed, at least in part, to each operator in calculating the extent of the surface area affected by that operator for the purpose of determining whether the operator qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982) 89 I.D.

A coal mine operator cannot avoid coverage under the Act by simply contracting to mine two less-than 2-acre sites for different owners, where the sites are adjacent, the operator treats them as related, and where, taken together, they encompass more than 2 acres.

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Mullins Contractors, 4 IBSMA 156 (Sept. 21, 1982) 89 I.D.

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Generally

An alleged violation of the effluent limitation for iron set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing total iron in discharges from a sedimentation pond to be in excess of 10 milligrams per liter, in the absence of evidence that the Hach test was not properly administered.

D & D Mining Co., 4 IBSMA 113 (Aug. 24, 1982) 89 I.D. 409

In a proceeding to review an alleged violation of the effluent limitations for iron and pH expressed in 30 CFR 715.17(a), OSM met its burden of establishing a prima facie case by its evidence that tests of water samples taken at the point of discharge of drainage from the sedimentation pond which received surface drainage from the areas disturbed by the surface coal mining and reclamation operations showed iron and pH levels outside the applicable limits.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982) 89 I.D.

Discharges from Disturbed Areas

The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations.

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Discharges from Disturbed Areas--Continued

bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982) 89 I.D.

Disturbed Areas

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

Sedimentation Ponds

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

The requirement of 30 CFR 717.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventative measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

In a civil penalty proceeding to review an alleged violation of the requirement of 30 CFR 717.17(a)(1) that drainage be passed through a sedimentation pond, OSM bears the ultimate burden of persuasion as to three basic elements of proof: (1) The existence of surface drainage which came into contact with disturbed area; (2) that this drainage did not pass through a sedimentation pond; and (3) that this drainage flowed off the permit area.

Under 30 CFR 717.17(a) the regulatory authority may grant exemptions from the requirement that drainage from disturbed area be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

WORDS AND PHRASES

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982)
89 I.D. 113

WORDS AND PHRASES--Continued

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

SURVEYS OF PUBLIC LANDS

GENERALLY

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed because no change has been made in the land actually covered by the lease.

Ray A. Frey et al., 65 IBLA 192 (June 29, 1982)

TAR SANDS

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for

TAR SANDS--Continued

a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

TAYLOR GRAZING ACT

GENERALLY

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D.

TIMBER SALES AND DISPOSALS

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A.C.C.T.S., 61 IBLA 166 (Jan. 25, 1982)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

Diana Coogle et al., 61 IBLA 393 (Feb. 22, 1982)

A.C.C.T.S., 61 IBLA 396 (Feb. 22, 1982)

A.C.C.T.S., 62 IBLA 43 (Feb. 24, 1982)

Alan Winter et al., 62 IBLA 299 (Mar. 18, 1982)

TIMBER SALES AND DISPOSALS--Continued

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Robert H. Barker, 62 IBLA 331 (Mar. 23, 1982)

BLM may properly deny a request for an extension of time for a timber sale contract where the purchaser asserts that the delay in cutting and removal was due to market fluctuations. However, where the Secretary has waived the regulations dealing with the term of timber sale contracts and extensions of time, thereby permitting uncompleted contracts to remain in effect past their expiration dates, an affected purchaser will be afforded a grace period on his right to cut and remove timber.

Robin Lumber Co., 66 IBLA 88 (July 29, 1982)

Where an appeal of a Bureau of Land Management action regarding the triggering of a small business set-aside timber sale program raises only class size issues, the appeal must be dismissed because the Small Business Administration, not the Department of the Interior, determines class size.

Public Timber Purchasers Group, 66 IBLA 244 (Aug. 17, 1982)

TOWNSITES

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no

TOWNSITES--Continued

other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie H. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

TRESPASS

GENERALLY

A notice to cease trespass and an order to remove improvements from public lands may properly issue where appellant has been occupying public lands without authorization or claim or color of title.

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

ADMINISTRATIVE REVIEW AND APPEALS

The price for which real property is acquired and the right, if any, of the grantor of such property to salvage of real property improvements on the land are matters determinable by agreement between the owners of the property and the acquiring agency, or by condemnation proceedings, and they are not reviewable upon appeal to this Office.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Expenses Incidental to Transfer of Title to the United States

Expenses incidental to transfer of title to the United States, reimbursable under § 303 of the Act and implementing regulations, do not include costs incurred by the grantors of the acquired property for title investigation work to satisfy objections to the title and hasten issuance of title insurance to the United States.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John R. Larsen & Mr. and Mrs. Louis E. Larsen, 4 OHA 272 (Apr. 16, 1982)

UNIFORM RELOCATION ASSISTANCE

Generally

Where the claim for additional moving and related costs was filed after the time limitation prescribed by Departmental regulations implementing the Relocation Act, and the record as a whole does not justify an extension of time for filing an additional claim, the claim is properly denied.

Uniform Relocation Assistance Appeal of E. Roy Sinclair, 4 OHA 216 (Jan. 4, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Generally--Continued

Where judgment required the claimant to remove certain fixtures to the real property, to which claimant had retained removal rights, and claimant failed to remove such property within the required time, such removal rights are properly treated as abandoned and the property remains in the United States.

Uniform Relocation Assistance Appeal of C. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where claimant began occupancy of the acquired property after the acquisition by the Government had been completed, his subsequent move from the property is not as a result of the acquisition by the Government; hence claimant is not a displaced person, and is not eligible for benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and B. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Moving and Related Expenses

Generally

Reimbursement is not allowable for costs of moving structures or other improvements in which the displaced person reserved ownership rights.

Where claim includes request for payment of moving expense that is not adequately substantiated by supporting data, the acquiring agency requests additional supporting data, and such additional data are not supplied within a reasonable time, the claim for such expenses is properly denied.

Uniform Relocation Assistance Appeal of C. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where the record on appeal establishes that claimant failed to remove signboards from property acquired by the Park Service after several notices, and Park Service thereafter properly removed signs as abandoned property, payment of benefits in an amount equal to the actual reasonable expense required to relocate such signs was proper under sec. 202 of the Act and implementing Departmental regulations.

Uniform Relocation Assistance Appeal of Rick Outdoor Advertising Co., 4 OHA 234 (Feb. 5, 1982)

Where claimant has not established his claim with sufficient evidence, and where decision of the Bureau official below is supported by the record, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and B. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Where the record evidence shows the claimant has not established his entitlement to payment for reasonable moving and related expenses in an amount greater than that authorized by the Fish and Wildlife Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Richard P. Catto, 4 OHA 278 (June 1, 1982)

Where the cost of moving a low-value, high-bulk item of personal property would not be disproportionate to its value, the agency shall make payment to the displaced person for the actual direct losses of that property as a result of discontinuing a business operation, but the payment shall not exceed the reasonable expenses that would have been required to relocate the property, in accordance with 41 CFR 114-50.601(b).

Uniform Relocation Assistance Appeal of Mr. & Mrs. Forrest L. Herson, 5 OHA 9 (Aug. 11, 1982)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

A claim for a fixed payment under § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, is properly disallowed where the claimant fails to establish that the business cannot be relocated without a substantial loss of its existing patronage.

Uniform Relocation Assistance Appeal of John E. Friel, Esq., 4 OHA 244 (Mar. 8, 1982)

Replacement Housing Payment for Homeowners

Generally

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits an adjusted price rather than the list price of the dwelling found by the Park Service to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James D. Cahill, 4 OHA 229 (Jan. 29, 1982)

Where the record shows the claimants have received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act and the Department's implementing regulations, the determination appealed from will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Dan J. Ring, 4 OHA 240 (Feb. 16, 1982)

A determination disallowing a claim for replacement housing differential costs under sec. 203(a)(1)(A) of the Act will be affirmed where the evidence shows a comparable replacement dwelling which was decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, could have been purchased at the time of the claimants' displacement for less than the purchase price of the Government-acquired dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

WILD AND SCENIC RIVERS ACT

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

WILD FREE-ROAMING HORSES AND BURROS ACT

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

WILDERNESS ACT

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter B. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between

the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 6, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, i.e., rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

P. M. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for

solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find seclusion.

Gilbert W. Baily, 65 IBLA 223 (July 9, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Tom H. Ford, 66 IBLA 14 (July 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Where the record evinces BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

BLM's practice of examining the mineral potential in the study phase of the wilderness review process, rather than the inventory phase, does not violate sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

City of Delta, 66 IBLA 282 (Aug. 19, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sierra Club et al., 66 IBLA 300 (Aug. 20, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

National Public Lands Task Force et al., 66 IBLA 340 (Aug. 26, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a)

(1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires, *inter alia*, that an area designated for wilderness preservation *generally* appear to have been affected *primarily* by the forces of nature with the imprint of man's work *substantially* unnoticeable. The underscored language, taken verbatim from the statute, is ample support for the proposition that a wilderness study area (WSA) need not be free of all intrusions.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Ken Brower, 67 IBLA 124 (Sept. 16, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Charles P. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness, opportunities for solitude, or opportunities for primitive and unconfined recreation, are entitled to considerable deference.

An appellant seeking reversal of a decision to include land in a wilderness study area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

WILDLIFE REFUGES AND PROJECTS

GENERALLY

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose

WILDLIFE REFUGES AND PROJECTS--Continued

GENERALLY--Continued

of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

LEASES AND PERMITS

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

EFFECT OF

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard R. Tingley, 62 IBLA 315 (Mar. 19, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fernimore et al., 63 IBLA 214 (Apr. 12, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

Gary E. Carter, 65 IBLA 338 (July 15, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Ronald W. Ross, 67 IBLA 32 (Sept. 7, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

POWERSITES

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James B. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, as amended, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, as amended.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Elmer G. Thomas et al., 66 IBLA 92 (July 30, 1982)

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

REVOCATION AND RESTORATION

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Where the Secretary has not expressly made revocation of a withdrawal retroactive, the Board of Land Appeals lacks authority to give the revocation retroactive effect.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Ronald W. Ramm, 67 IBLA 32 (Sept. 7, 1982)

WORDS AND PHRASES

"*Bona fide purchaser*." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

"*Roadless*." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

Tom H. Ford, 66 IBLA 14 (July 23, 1982)

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

Ken Brower, 67 IBLA 124 (Sept. 16, 1982)

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

Charles H. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

WORDS AND PHRASES--Continued

"*Public lands*." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Hansen et al., 63 IBLA 12 (Mar. 25, 1982)

"*Date of location*." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

"*Public lands*." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

"*Good faith*." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willmorth, 64 IBLA 159 (May 25, 1982)

"*Leasing*." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Kenneth Bateman, 64 IBLA 357 (June 15, 1982)

"*Smallest legal subdivision*." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

WORDS AND PHRASES--Continued

"Pending." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982)
89 I.D.

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior -- James G. Watt

Office of Hearings and Appeals -- James A. Limb, Director

Office of the Solicitor -- William H. Coldiron, Solicitor

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This index-digest covers all published and important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1982, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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CASE SYMBOLS

ANCAB	--	Alaska Native Claims Appeal Board
D	--	Ad Hoc Appeals
IA-T	--	Indian Appeals -- Tort
IBCA	--	Interior Board of Contract Appeals
IBIA	--	Interior Board of Indian Appeals
IBLA	--	Interior Board of Land Appeals
IBMA	--	Interior Board of Mine Operations Appeals
IBSMA	--	Interior Board of Surface Mining & Reclamation Appeals
M	--	Solicitor's Opinion
OHA	--	Office of Hearings and Appeals
SEC	--	Office of the Secretary

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Editor's Note: The headnotes in this volume have been sorted by a computer. Editorial changes have been made to allow for grouping of the headnotes where they were similar and/or identical to headnotes from two or more decisions.

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Norman R. Byrd v. Cecil Andrus, Secretary of the Interior, & U.S., Civil No. C-79-229, E.D. Wash. Suit pending.

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates, a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Or. Dismissed, Oct. 24, 1978. No appeal.

Zelph S. Calder, A-30039 (Sept. 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, Aug. 10, 1964; no appeal.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (1978)

California Ass'n of 4WD Clubs, Inc., & California Off-Road Vehicle Ass'n, Inc. v. Cecil Andrus, Secretary of the Interior & James B. Ruche, State Dir., Cal. State Office of BLM, Civil No. 79-1797-N, S.D. Cal. Judgment for defendant Aug. 5, 1980; aff'd, Jan. 22, 1982.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd, 296 F.2d 384 (1961).

State of California et al. v. Doria Mining & Engineering Corp. et al., U.S. (Intervenor), 17 IBLA 390 (1974)

Doria Mining & Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C.D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); vacated & remanded, Nov. 2, 1979.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979)

California Portland Cement Co. v. Cecil D. Andrus et al., Civil No. C-79-0477, D. Utah. Rev'd Dec. 30, 1980.

Western Slope Carbon, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-350, C.D. Utah. Suit pending.

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Marla B. Bohl, Chief, Land & Mining, BLM, Wyo. State Office, Civil No. C79-160, D. Wyo. Rev'd June 9, 1980; aff'd, Jan. 8, 1982. No petition.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968, appealed by Secretary, July 5, 1968, 75 I.D. 289 (1968)

Cameron Parish Police Jury v. Stewart L. Udall et al., Civil No. 14,206, W.D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued Nov. 5, 1969.

Jack D. Canon et al., 30 IBLA 112 (1977)

Jack D. & Billie B. Canon, C. Fred & Chloe Underwood, Donald W. & Susan Canon, David A. & Ann Underwood v. Cecil D. Andrus, Secretary of the Interior, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

James W. Canon et al., 84 I.D. 176 (1977)

Mark B. Ringstad, William I. Waugaman, William N. Allen III, Nils Braastad, Elmer Price, Dan Ramras, & Kenneth L. Rankin v. U.S., Secretary of the Interior, & The Arctic Slope Regional Corp., Civil No. A78-32-Civ, D. Alaska. Suit pending.

Canterbury Coal Co., 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, U.S. Ct. of Appeals, 3d Cir. Aff'd per curiam, June 15, 1977.

Capital Fuels, Inc., 2 IBSMA 261, 87 I.D. 430 (1980)

Capital Fuels, Inc. v. Cecil D. Andrus, Secretary of the Interior, Walter N. Heine, Dir. Office of Surface Mining Reclamation & Enforcement, Civil No. 80-2438, S.D. W. Va. Suit pending.

Carbon Fuel Co., 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, 581 F.2d 891 (1978); cert. denied, Oct. 30, 1978.

Jack E. Carl, A-27870; A-27900 (Apr. 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd, 309 F.2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, Dec. 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton et al.

C. F. Lytle Co., IBCA-172 (Sept. 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate) et al. v. Udall, Civil No. 67-323, W.D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd & remanded to dismiss for want of jurisdiction, 407 F.2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd, 397 U.S. 598 (1970).

Evelyn Chambers, 33 IBLA 271 (1978)

Evelyn Chambers v. Cecil D. Andrus, Secretary of the Interior & Paul Howard, State Dir., Bureau of Land Management, Civil No. C-78-0111, D. Utah. Settled by stipulation, Dec. 22, 1978.

Chaparral Resources, Inc., 39 IBLA 269 (1979)

Chaparral Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, C. J. Curtis, Area O&G Supervisor, Geological Survey & Glenna M. Lane, Chief, O&G Section, Land Office, BLM, Civil No. C79-077, D. Wyo. Aff'd, Jan. 31, 1980.

Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964); Shell Oil Co., A-30575 (Oct. 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed Aug. 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against Dept. by the lower court aff'd, 423 P.2d 104 (1967); rev'd, 432 P.2d 435 (1967).

Estate of Fannie Newrobe Choate, 7 IBIA 171 (1979)

Helen Edmo Sherman, Mary New Robe Redhead, Roy (Archie, Jr.) St. Goddard, Vincent Spotted Bear, Jack Edmo v. Cecil D. Andrus, Secretary of the Interior, Jeanette Rattler Choate Marceau, Civil No. CV-79-73-GF, D. Mont. Suit pending.

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, Wyo. State Dir., Bureau of Land Management, Civil No. C78-257, D. Wyo. Suit pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F.2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Division of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, Feb. 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76032 SC, D. Cal. Suit pending.

Citizens Committee to Save Our Public Lands et al. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C77-0633, N.D. Cal. Judgment for defendant, May 19, 1977.

City of Homer, 6 ANCAB 203, 88 I.D. 1047 (1981)

City of Homer v. Curtis McVee, State Dir. of the Bureau of Land Management, et al., Civil No. A82-043 CIV, D. Alaska. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdivision of the State of Nevada v. Thomas Kleppe, Secretary of the Interior, & his successors in office, & E. I. Rowland, Dir., Bureau of Land Management, for the State of Nevada & his successors in office, Civil No. LV-77-13 RDF, D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's report adverse to U.S. issued Dec. 16, 1970; Chief Commr's report concurring with the Trial Commr's report issued Apr. 13, 1971. P.L. 92-108, 85 Stat. 331, Aug. 11, 1971, enacted accepting the Chief Commr's report.

Appeals of Ethyl D. & Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antwell, 2 ANCAB 302 (1978)

Richard Wagner et al. v. U.S. et al., Civil No. A78-106 CIV, D. Alaska. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (Dec. 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; rev'd & remanded with direction to enter judgments for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967, W.D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, Jan. 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah & Abram Cohen v. U.S., Civil No. 3158, D.R.I. Compromised.

Colorado-Ute Electric Ass'n, 46 IBLA 35 (1980)

Colorado-Ute Electric Ass'n v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Charles W. Luscher, Acting State Dir., Colorado State Office, BLM, Civil No. 80-C-500, D. Colo. Suit pending.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd, 428 F.2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, Feb. 7, 1974; per curiam decision, aff'd, Jan. 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, Jan. 9, 1958; appeal dismissed for want of prosecution, Sept. 18, 1958, D.C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, In the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, Aug. 27, 1971; aff'd, 481 F.2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co. et al., A-30760 (Sept. 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, Mar. 20, 1970; reconsideration denied, May 20, 1970.

Consolidation Coal Co., 1 IBSMA 273, 86 I.D. 523 (1979); 2 IBSMA 21, 87 I.D. 59 (1980)

Consolidation Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-3037, S.D. Ill. Judgment for defendant, Feb. 8, 1982.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall et al., Civil No. 366-62. Judgment for defendant, Apr. 29, 1966; aff'd, Feb. 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Office Hearings & Appeals, Interior Board of Land Appeals, & Continental Oil Co., Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Joe Conway, 59 IBLA 314 (1981)

Joe Conway v. James Watt et al., Civil No. C82-0029, D. Wyo. Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42, 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

David E. Cooley, Jr., 62 IBLA 87 (1982)

David E. Cooley, Jr. v. James G. Watt, Secretary of the Interior, et al., Civil No. C82-0188, D. Wyo. Suit pending.

Gordon L. Cooper, 51 IBLA 191 (1980)

Gordon L. Cooper v. Cecil D. Andrus et al., Civil No. 81-151-EDP, E.D. Cal. Suit pending.

Autrice C. Copeland, 69 I.D. 1 (1962)
See Leslie N. Baker et al.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1572. Judgment for defendant, June 29, 1979; appeal filed Aug. 28, 1979.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoff, 10 IBLA 363, 80 I.D. 301 (1973)

Edward D. Neuhoff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, Sept. 12, 1975 (opinion); aff'd, July 17, 1978; no petition.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alaska. Judgment for defendant, Mar. 23, 1973; aff'd, Sept. 3, 1974; no petition.

William D. Cornia et al., Wyoming 4-63-1, etc.; Utah 1-63-1, etc. (Aug. 25, 1965)

William D. Cornia et al. v. Stewart L. Udall, Civil No. 4-66, N.D. Utah. Dismissed with prejudice, Sept. 1, 1967.

Cortella Coal Corp. et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Mortor, Secretary of the Interior, Civil No. A-169-73, D. Alaska. Dismissed with prejudice, Jan. 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued Mar. 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Honorable Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Dir. for the Bureau of Indian Affairs, Anadarko Agency, & Samedan Oil Corp. Civil No. CIV 77-0415T, D. Okla. Aff'd, Jan. 19, 1979; no appeal.

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation & Enforcement, 3 IBSMA 44, 88 I.D. 394 (1981)

Council of the Southern Mountains, Inc. v. James G. Watt, Civil No. 81-1022. Suit pending.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Glenn Coy, Resource Service Co., 52 IBLA 182, 88 I.D. 236 (1981)

Mildred D. Coy et al. v. James G. Watt, Secretary of the Interior, et al., Civil No. 81-0984. Suit pending.

Philip Cramer, 57 IBLA 386 (1981)

Philip Cramer v. James Watt, Secretary of the Interior, Civil No. CIV 81-1356, D. Idaho. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, Individ. & in his official capacity as Secretary of the Interior, & his successors in office et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, Dec. 16, 1975.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

Elizabeth Barndt Crouse et al. v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S. & Rogers C. B. Morton, Civil No. F-27-71 Civ. D. Alaska. Dismissed, July 13, 1972; no appeal.

Estate of William Mason Cultee, 9 IBIA 43 (1981)

Susan Lee, Deborah, Karen Beatty, & Brenda Lee Cultee v. James G. Watt, Secretary of Interior, Interior Board of Indian Appeals, & Helene Jake, Civil No. C811164, W.D. Wash. Suit pending.

Bill Cunningham, Representative of Bob Marshall Alliance, Montana Wilderness Ass'n & The Wilderness Society (Protestant), Paul C. & Ann E. Kohlman (Lease Offerors), G. H. Tanner (Lease Offeror). Protest dismissed, dated Jan. 11, 1982, approved by the Ass't Secretary, Jan. 15, 1982.

Bob Marshall Alliance et al. v. James G. Watt, Civil No. 82-15 GF, D. Mont. Suit pending.

Vincent M. D'Amico, Wolt C. Stempel, 55 IBLA 116 (1981)

Vincent M. D'Amico et al. v. James Watt et al., Civil No. 81-2050. Suit pending.

Estate of George Daniels, IA-1295 (Nov. 2, 1965)

Elizabeth Daniels et al. v. Johnson, Supt., Osage Indian Agency, & Udall, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

Suits for Judicial Review

David Excavating Co., Inc. (Petitioner) v. *Office of Surface Mining Reclamation & Enforcement (Respondent)*, 3 IBSMA 163 (1981); 3 IBSMA 215 (1981)

David Excavating Co. v. *James Watt, Secretary of the Interior*, Civil No. EV-81-171-C, S.D. Ind. Suit pending.

David Excavating Co. (Petitioner) v. *Office of Surface Mining Reclamation & Enforcement (Respondent)*, 4 IBSMA 2 (1982)

David Excavating Co. v. *Secretary of the Interior*, Civil No. EV-82-40-C, S.D. Ind. Suit pending.

Susan Dawson, 35 IBLA 123 (1978)

Susan Dawson v. *Cecil Andrus, Secretary of the Interior*, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Oma Belle Day et al., AA-5702 (Dec. 30, 1969)

Oma Belle Day v. *Walter J. Hickel et al.*, Civil No. A-9-70, D. Alaska. Judgment for defendant, Feb. 19, 1971; *aff'd*, 481 F.2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. *Clarence A. Davis, Civil No. 2125-56.* Judgment for defendant, June 20, 1957; *aff'd*, 259 F.2d 780 (1958); *cert. denied*, 358 U.S. 835 (1958).

Wayne E. DeBord et al., 50 IBLA 216 (1980)

Paul H. Landis et al. v. *Cecil Andrus, Secretary of the Interior, & his officers, employees & agents, to-wit et al.*, Civil No. 80-2110, D. Idaho. Suit pending.

H. R. Delasco, 39 IBLA 194, 84 I.D. 192 (1979); *Blanche V. White*, 40 IBLA 152, 85 I.D. 408 (1979)

Stewart Capital Corp. et al. v. *Cecil D. Andrus, Secretary of the Interior*, Civil No. C79-123, D. Wyo. *Aff'd in part, rev'd in part*, Apr. 24, 1980; appeal withdrawn.

Wilbur G. Desens et al., 54 IBLA 271 (1981)

Wilbur G. Desens & Fred L. Engle, d/b/a Resource Service Co. v. *James G. Watt, Secretary of the Interior, et al.*, Civil No. C81-0213, D. Wyo. Suit pending.

Geosearch, Inc. v. *James G. Watt, Secretary of the Interior, et al.*, Civil No. C81-0214, D. Wyo. Suit pending.

Richard J. DiMarco, 53 IBLA 130 (1981)

Richard J. DiMarco v. *James G. Watt, Secretary of the Interior, et al.*, Civil No. 81-2243. Suit pending.

Dinco Coal Sales, Inc., 4 IBSMA 35, 89 I.D. 113 (1982)

Mary DeBord et al. v. *James G. Watt, Secretary of the Interior, & Dinco Coal Sales, Inc.*, Civil No. 82-99, D. Ky. Suit pending.

Carol Dolezal, 56 IBLA 52 (1981)

Henry A. Alker v. *James Watt & Carol Dolezal*, Civil No. 81-0847, D.N.M. Suit pending.

Downtown Properties, Inc. v. *Area Dir., Sacramento Area Office, Bureau of Indian Affairs*, 8 IBIA 248 (1981)

Downtown Properties, Inc. v. *Cecil Andrus, Secretary of the Interior, et al.*, Civil No. 80-1724-N(M), S.D. Cal. Suit pending.

Downtown Properties, Inc. v. *Cecil Andrus, Secretary of the Interior, et al.*, Civil No. 81-0835-N(H), S.D. Cal. Suit pending.

The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958)

The Dredge Corp. v. *J. Russell Penny*, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; *aff'd*, 362 F.2d 889 (9th Cir. 1966); no petition. See also *Dredge Co.* v. *Husite Co.*, 369 P.2d 676 (1962); *cert. denied*, 371 U.S. 821 (1962).

Suits for Judicial Review

Drummond Coal Co., 2 IBSMA 96, 87 I.D. 196 (1980)

Drummond Coal Co. v. Cecil D. Andrus et al., Civil No. C-V-80-M-0829, N.D. Ala. Judgment for plaintiff, Apr. 20, 1981.

Lawrence E. Dye, 57 IBLA 360 (1981)

Lawrence E. & Claire E. Dye v. James G. Watt et al., Civil CIV-81-982-HB, D.N.M. Suit pending.

Alfred L. Easterday, 34 IBLA 195 (1978); Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee) 36 IBLA 181 (1978); 50 IBLA 306 (1980)

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Alfred L. Easterday, & J. Roe, Civil No. C78-104, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, Alfred L. Easterday, & J. Roe, Civil No. C78-213, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. C78-214, D. Wyo.

Above actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, BLM, Civil No. C80-0372, D. Wyo. Suit pending.

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, U.S. Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, U.S. Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975); On Reconsideration, 83 I.D. 425 (1976); aff'd en banc, 976); 83 I.D. 695 (1976); 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, U.S. Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Eastover Mining Co., 2 IBSMA 5, 87 I.D. 9 (1980)

Eastover Mining Co. v. Cecil D. Andrus et al., Civil No. 80-17, E.D. Ky. Suit pending.

Lawrence Edwards, A-30696, A-30705 (Apr. 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Dir., Bureau of Land Management, & Paul Unruh, Civil No. 77-0050 BRI, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Martha E. Ehbrecht, 62 IBLA 382 (1982)

Martha E. Ehbrecht v. Dept. of the Interior et al., Civil No. 82-1329. Suit pending.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (1978)

Riter & Kerry Ekker v. Cecil Andrus & BLM, Civil No. C-80-180A, Utah. Suit pending.

Appeal of Eklutna, Inc., 1 ANCAB 165, 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board et al., Civil No. A76-236, D. Alaska. Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, Individ. & on behalf of all others similarly situated v. Thomas Kleppe, Individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of administrative remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs' motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979)

H. J. Enevoldsen v. Cecil D. Andrus, Secretary of the Interior, Glenna M. Lane, Chief, O&G Section, Wyo. State Office, BLM, & Shackelford Reeder, Civil No. C80-0047, D. Wyo. Suit pending.

Henry J. Ernst, A-27196 (Nov. 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (Apr. 10, 1970); 1 IBLA 269, 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

John J. Farrelly et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Ralph G. Faulkner et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred, & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Federal Energy Corp., 51 IBLA 144 (1980)

Federal Energy Corp. v. U.S. Dept. of the Interior, Civil No. 81-0433. Voluntary dismissal, Apr. 27, 1981.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39, 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222, 86 I.D. 234 (1979)

Benson J. Lamp v. Cecil Andrus, Secretary of the Interior, James L. Burski, Douglas E. Henriques, & Edward W. Stuebing, Admin. Judges, IBLA, Civil No. 79-1804. Dismissed as to defendant Feinberg, Mar. 17, 1981.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Comm'r of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand & Flora Rondeau for themselves & all others similarly situated, & Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves & all others similarly situated v. Rogers C. B. Morton et al., Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Thomas R. Flickinger, 40 IBLA 53 (1979); Pamela W. Kay, 40 IBLA 240 (1979); Robert B. Coen, 41 IBLA 55 (1979)

Robert J. Ahrens, Harry Alatchanian, Jon Arney, Peter R. Brant, Helen D. Coen, Robert B. Coen, & Jack P. Corsi, et al. v. Cecil Andrus, Secretary of the Interior, Civil No. C79-166, D. Wyo. Judgment for plaintiff.

Joel Held v. Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Civil No. CA-80-0133-G, N.D. Tex. Suit pending.

Foote Mineral Co., 34 IBLA 285; 85 I.D. 171 (1978)

Foote Mineral Co. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, H. William Menard, Individ. & as Dir., Geological Survey, & Murray T. Smith, Individ. & as Area Mining Supervisor, Geological Survey, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Foote Mineral Co. v. U.S., Ct. Cl. No. 12-78. Suit pending.

Carl E. Forsberg et al., A-29158 et al., (Aug. 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Administrative Appeal of Fort Berthold Land & Livestock Ass'n v. Area Dir., Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90, 87 I.D. 201 (1980)

Edward S. Danks, John Fredericks, Maurice Danks, et al. v. Harrison Fields, Acting Supt. of Fort Berthold Indian Reservation, et al., Civil No. A4-80-39, D.N.D. Suit pending.

Robert K. Foster et al., A-29857 (June 15, 1964)

Robert K. Foster et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the Estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co. et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IBLA 19 (1979)

Fuel Resources Development Co. v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Dir. of the Colo. State Office, BLM, et al., Civil No. 79-1639, D. Colo. Suit pending.

Suits for Judicial Review

Harold W. Fullerton, 46 IBLA 116 (1980)

Harold W. Fullerton, v. Cecil Andrus, Secretary of the Interior, Civil No. 80-22-M, D. Mont. Judgment for defendant, Mar. 23, 1981.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall et al., Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, Feb. 15, 1967; aff'd, 396 F.2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, Dec. 1, 1961; aff'd, 315 F.2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (Oct. 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, Jan. 17, 1969; no appeal.

D. R. Gallagher, 54 IBLA 72 (1981)

D. R. Gallagher v. U.S., James G. Watt, Secretary of the Interior, Robert Burford, Dir., BLM, Civil No. C81-505J, D. Utah. Suit pending.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113, 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, Nov. 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaunmah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W.D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, Individ. & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, Dec. 16, 1963.

Estate of Walter George & Minnie Racehorse George Snipe, 9 IBIA 20 (1980)

Charlotte & Charlene Hughes v. James G. Watt, Civil No. 81-671-HB, D.N.M. Suit pending.

Geosearch, Inc., IBLA 80-128. Appeal dismissed by by Order dated Jan. 2, 1980.

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C80-0084, D. Wyo. Judgment for defendant, Oct. 15, 1980.

Geosearch, Inc., 40 IBLA 267 (1979)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-79-0593, D. Utah. Judgment for defendant, Aug. 22, 1980; no appeal.

Geosearch, Inc., 40 IBLA 401 (1979)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-79-350, D. Wyo. Dismissed for want of jurisdiction, 494 F. Supp. 978 (1980); no appeal.

Geosearch, Inc., 41 IBLA 291 (1979); James Koch et al., 61 IBLA 235 (1982)

Geosearch, Inc., & Carrie Garner v. Getty Oil Co. et al., Civil No. 82-1109. Suit pending.

James Koch & Resource Service Co. v. James G. Watt et al., Civil No. 82-1189. Suit pending.

Geosearch, Inc., 47 IBLA 39 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, Maxwell T. Lieurance, State Dir., BLM, Glenna M. Lane, Chief, O&G Section, Wyo. State Office, BLM, Warren R. Haas, Fed. Energy Corp., & Banner Oil & Gas Ltd., Civil No. C80-0205, D. Wyo. Dismissed Feb. 20, 1981.

Geosearch, Inc., 48 IBLA 51 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, Maxwell T. Lieurance, State Dir., Wyo. State Office, et al., Civil No. C-80-0258. Dismissed, Feb. 20, 1981.

Geosearch, Inc., 48 IBLA 76 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-80-0259, D. Wyo. Dismissed, Feb. [illegible], 1981

Geosearch, Inc., 48 IBLA 333 (1980)

Geosearch, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C-80-0292, D. Wyo. Dismissed, Feb. 20, 1981

Geosearch, Inc., 49 IBLA 19 (1980)

Geosearch, Inc. v. Cecil D. Andrus et al., Civil No. C-80-0300, D. Wyo. Suit pending.

Suits for Judicial Review

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, Aug. 3, 1961; aff'd, 309 F.2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (Apr. 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

John Gonzales, A-30604 (Sept. 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alaska. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

Charles Goodrich, 60 IBLA 25 (1981)

Charles Goodrich v. James Watt, Civil No. 82-0405. Suit pending.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); appeal dismissed, Mar. 9, 1976.

Ray Granat et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Dept. of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw et al. v. Secretary, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974); 24 IBLA 49 (1976)

Grindstone Butte Project et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Dir. of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; rev'd 638 F.2d 100 (9th Cir. 1981).

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, Deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by & through their next friend & Guardian Ad Litem, Dale Running Bear v. Rogers Morton, Individ. & as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Celeste C. Grynberg, Dean G. Smernoff, 44 IBLA 197 (1979)

Celeste C. Grynberg & Dean G. Smernoff as Co-Trustees for the Stephen Mark Grynberg Trust v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Colo. State Dir., BLM, IBLA, Joseph W. Goss & Joan B. Thompson, Judges thereof, Civil No. 79-1771, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Dept. of the Interior, Civil No. 77-0869. Aff'd, Oct. 11, 1977.

Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (1981)

Ronald M. & Marion G. Guntert v. James G. Watt, Secretary of the Interior, et al., Civil No. CIVS-82-508-PCW, E.D. Cal. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Suits for Judicial Review

Guthrie Electrical Construction, 62 I.D. 280 (1955); IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted & case closed Oct. 10, 1958.

Ottlin D. Haas, 61 IBLA 338 (1982)

Ottlin D. Haas v. Dept. of the Interior et al., Civil No. 82-1327. Suit pending.

Walter S. Haas, Jr., 55 IBLA 283 (1981)

Walter S. Haas, Jr. v. James Watt et al. Civil No. 81-816, D. Or. Suit pending.

L. H. Hagood et al., 65 I.D. 405 (1958)

Edwin Still et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

Estate of Charles Hall, Sr., 8 IBIA 53 (1980)

Charles Hall, Jr. & Ruby Martin Archdale v. Cecil Andrus, Individ. & as Secretary of the Interior, Civil No. CV-80-67-GF, D. Mont. Suit pending.

William Hall et al., A-30849; A-30852; A-30857 (Sept. 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alaska. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (Sept. 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, Dec. 13, 1963 (opinion); judgment entered Feb. 11, 1964; appeal docketed Feb. 14, 1964; dismissed by plaintiff, Mar. 20, 1964.

Albert Hanan et al.; J. A. Jack & Sons, Inc.; & Hemphill Brothers, Inc., 6 ANCAB 111 (1981)

Sealaska Corp. v. Secretary of the Interior et al., Civil No. A81-513 CIV, D. Alaska. Suit pending.

Raymond J. Hansen et al., 67 I.D. 362 (1960)

Raymond J. Hansen et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (Mar. 5, 1965)

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, Sept. 30, 1965; amended complaint filed Nov. 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, Nov. 15, 1967; judgment for defendants, Mar. 26, 1968; rev'd, 427 F.2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, Dec. 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, Dec. 7, 1973; motion for new trial denied, Feb. 6, 1974; no appeal.

Royal Harris, 45 IBLA 87 (1980)

Royal Harris, James Friedman & Stu Mach v. U.S., Cecil Andrus, Secretary of the Interior, George Gustafson, Townsite Trustee for the State of Alaska, Civil No. A80-174-Civ., D. Alaska. Suit pending.

Virgil T. Hartquist, 51 IBLA 356 (1980)

Virgil T. Hartquist v. James G. Watt, Secretary of the Interior, Civil No. 81-319, D. Colo. Suit pending.

Paul Harvey et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest & Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D.N.M. Judgment for defendant, Jan. 25, 1967; aff'd, 384 F.2d 883 (10th Cir. 1967); no petition.

Hat Ranch, Inc., 27 IBLA 340, 83 I.D. 542 (1976)

Hat Ranch, Inc. v. Thomas Kleppe et al., Civil No. 76-668M, D.N.M. Remanded to the Interior Board of Land Appeals, June 2, 1978; appeal dismissed for lack of jurisdiction, Oct. 18, 1978.

Billy K. Hatfield et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Ct. of Appeals, D.C. Cir. Board's decision aff'd, 562 F.2d 1260 (1977).

Havlah Group, 60 IBLA 349 (1981)

Havlah Group, a Partnership & Gerald P. Kooyers v. Watt, Civil No. CIV-82-1018, D. Idaho. Suit pending.

Suits for Judicial Review

Headwaters Ass'n (Protestant-Appellant), Cabax Mills et al. (Intervenors), IBLA 76-68, remanded to Bureau of Land Management by Order, Oct. 21, 1975; 33 IBLA 91 (1977); Appeal of Harold P. Canady et al., 29 IBLA 69 (1977); Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (1976)

Arthur Downing, Alan Winter, Alan Troxler & Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Or. Stipulated dismissal, Dec. 30, 1976.

Thomas D. Hickey, 34 IBLA 86 (1978)

Thomas D. Hickey v. U.S., Interior Board of Land Appeals, Cecil D. Andrus, Secretary of the Interior, & William L. Mathews, State Dir. (Idaho), BLM, Civil No. CIV 78-1142, D. Idaho. Suit pending.

Jesse Higgins, Paul Gower & William Gipson v. Old Ben Coal Corp., 81 I.D. 423 (1974)

Jesse Higgins et al. v. Cecil D. Andrus, No. 77-1363, U.S. Ct. of Appeals, D.C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Judgment for plaintiff, Apr. 4, 1978.

The Hoke Co., 3 IBSMA 7 (1981)

The Hoke Co. v. U.S. & James Watt, Secretary of the Interior, Civil No. 81-0050-O(G), W.D. Ky. Suit pending.

Holland Livestock Ranch & John J. Casey, 52 IBLA 326, 88 I.D. 275 (1981)

Holland Livestock Ranch et al. v. U.S., James Watt, Secretary of the Interior, et al., Civil No. CIV-R-81-68-BRT, D. Nev. Suit pending.

Kenneth Holt, an Individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Home Petroleum Corp et al., 54 IBLA 194, 88 I.D. 479 (1981)

Anthony C. Pagedas, Calvin J. Gillespie, Peter G. Sarantos, Thomas C. Pagedas, Donald J. Albrecht, & Fred L. Engle, dba Resource Service Center v. James G. Watt, Secretary of the Interior, Glenna M. Lane, Chief, O&G Sec., Wyo. State Office, BLM, Civil No. C81-206, D. Wyo. Suit pending.

Geosearch, Inc. & M. T. McGregor v. James G. Watt et al., Civil No. C81-0208, D. Wyo. Suit pending.

Hoover & Bracken Energies, Inc., 52 IBLA 27, 88 I.D. 7 (1981)

Hoover & Bracken Energies, Inc. v. DOI, James Watt, Secretary, Doyle G. Frederich, Acting Dir. U.S. Geological Survey & Theodore Krenzke, Dep. Comm'r, BIA, Civil No. CIV-81-461T, W.D. Okla. Judgment for plaintiff, Nov. 18, 1981.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam decision, aff'd, Apr. 28, 1966; no petition.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308 (1978)

Charles House & Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, a.k.a. Mrs. Leonard Skinner, Deceased v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CV-R-80-148-BRT, D. Nev. Suit pending.

U.S. v. Charles House, Eleanor Lee Burnham, as Sole Heir & Devisee of Geneva Tullis Skinner, a.k.a. Mrs. Leonard Skinner, Deceased, Fargo Pacific Rock & Sand, Inc., & Thiriot Sand & Gravel, Civil No. CIV-LV-81-89, RDF, D. Nev.

Actions consolidated. Suit pending.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alaska. Dismissed with prejudice, Oct. 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Dismissed with prejudice, Mar. 6, 1979; aff'd, Feb. 10, 1981.

Suits for Judicial Review

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565 (Order of Dismissal dated Feb. 22, 1973); reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, Dec. 17, 1974; aff'd, 529 F.2d 645 (10th Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, Mar. 31, 1976; rev'd & remanded with directions, 570 F.2d 906 (10th Cir. 1978); cert. denied, Oct. 2, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, Nov. 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd & remanded for further admin. proceedings, 406 F. Supp. 214 (1976); appeal filed Jan. 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; aff'd, Nov. 7, 1977; no petition.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965); U.S. v. Ollie Mae Shearman et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed et al. v. Dept. of the Interior et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, Sept. 3, 1965; dismissed, Nov. 10, 1965; amended complaint filed, Sept. 11, 1967.

U.S. v. Raymond T. Michener et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp. et al., Civil No. 1-67-97, S.D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd, 480 F.2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, Aug. 30, 1976.

Inexco Oil Co. et al., 54 IBLA 260 (1981)

Janet E. MacCracken & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt, Secretary of the Interior, et al., Civil No. C81-0212, D. Wyo. Suit pending.

Geosearch, Inc. v. James Watt, Secretary of the Interior, et al., Civil No. C81-0215, D. Wyo. Suit pending.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Dec. 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of Sec. 603 of the Federal Land Policy & Management Act of 1976 - Bureau of Land Management (BLM) Wilderness Study, 86 I.D. 89 (1979)

Rocky Mountain Oil & Gas Ass'n v. Cecil D. Andrus, Secretary of the Interior & Leo Krulitz, Solicitor of the Interior, Civil No. C78-265, D. Wyo. Judgment for plaintiff, Nov. 17, 1980; appeal filed, Jan. 5, 1981.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, Mar. 27, 1968.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (1979)

Teresa Ramirez, Executor of Estate of Lola Ramirez v. Secretary of the Interior, Civil No. 79-L-293, D. Neb. Suit pending.

Island Creek Coal Co., 1 IBSMA 316, 86 I.D. 724 (1979)

Island Creek Coal Co., Rebel Coal Co. v. Cecil D. Andrus et al., Civil No. 80-3137, S.W. W. Va. Suit pending.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior, & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, Sept. 10, 1976.

J. A. Jones Construction Co. et al., IBCA-233 (June 17, 1960)

Palisades Contractors et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F.2d 926 (1968); remaining aspects compromised.

Suits for Judicial Review

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen et al., IBCA-363 (Mar. 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, Feb. 24, 1964; no appeal.

John Walters Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement, (Respondent), 3 IBSMA 238; 258; 259 (1981)

John Walters Coal Co. v. James Watt et al., Civil No. 81-129, E.D. Ky. Suit pending.

Calvin C. Johnson, 35 IBLA 306 (1978)

Calvin C. Johnson v. Cecil Andrus, Secretary of the Interior, Paul Howard, Utah State Dir., BLM, Morgan S. Jensen, District Manager Kanab District, Larry Sip, Area Manager, Vermilion Resource Area, Civil No. C-78-0377, D. Utah. Dismissed with prejudice, Mar. 3, 1981.

Dale Johnson, A-30806 (Sept. 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alaska. Stipulated dismissal, Apr. 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971);
U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, Oct. 18, 1977; aff'd, Sept. 18, 1980. No petition.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S. et al., Civil No. 76-0552. Dismissed as to defendants U.S., Dept. of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

J. T. & W. Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 3 IBSMA 283 (1981)

J. T. & W. Coal Co. v. James G. Watt, Secretary of the Interior, Civil No. 81-195, E.D. Ky. Suit pending.

June Oil & Gas, Inc., Cook Oil & Gas, Inc., 41 IBLA 394, 86 I.D. 374 (1979)

June Oil & Gas, Inc., & Cook Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. 79-1334, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

Kenneth J. Kadow et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alaska. Judgment for defendant, Sept. 7, 1967; dismissed for lack of prosecution, Feb. 2, 1968; no petition.

Kaiser Steel Corp. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 1 IBSMA 184 (1979); Kaiser Steel Corp., 2 IBSMA 158, 87 I.D. 324 (1980)

Kaiser Steel Corp. v. Office of Surface Mining & Enforcement, Civil No. 80-656-M, D.N.M. Suit pending.

Carlyle Kammerer, Jr., et al., 47 IBLA 246 (1980)

Milton L. Mounce v. Cecil D. Andrus, Secretary of the Interior, & Maxwell T. Lieurance, Wyo. State Dir., BLM, Civil No. C80-0240, D. Wyo. Suit pending.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawah Coal Co. v. Cecil D. Andrus, No. 77-1089, U.S. Ct. of Appeals, 4th Cir. Petition for review denied, 553 F.2d 361 (4th Cir. 1977).

Vivian Sullivan Karlson, 60 IBLA 10 (1981)

Vivian Sullivan Karlson v. James G. Watt, Civil No. 82-172, D. Or. Suit pending.

R. A. Keans, A-30183 (Feb. 16, 1965)

R. A. Keans v. Stewart L. Udall et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, Nov. 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (Sept. 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd, 265 F. Supp. 848 (1967); aff'd, 404 F.2d 97 (10th Cir. 1968); no petition.

Administrative Appeal of Leo M. Kennerly, Sr. v. Billings Area Dir., Bureau of Indian Affairs, 8 IBIA 106 (1980)

Leo Kennerly, Sr. v. U.S., Cecil Andrus et al., Civil No. CV-81-3-GP, D. Mont. Suit pending.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Corp., 6 IBLA 108 (1972); Petition for reconsideration denied, May 14, 1974

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton et al., Civil No. 616-72. Dismissed with prejudice, Oct. 22, 1974; aff'd, 527 F.2d 838 (1975); no petition.

Estate of San Pierre Kilkaken (Sam E. Hill), 1 IBIA 299, 79 I.D. 583 (1972); 4 IBIA 242 (1975); 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with prejudice.

John J. King, A-28543 (Oct. 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, Nov. 8, 1961; rev'd, 308 F.2d 650 (1962); no petition.

Suits for Judicial Review

John J. King et al., Fairbanks 033268, 033279 (Sept. 25, 1964)

John J. King et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs & all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (Oct. 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alaska. Dismissed with prejudice Apr. 24, 1968.

Barbara G. Kirk & Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (Apr. 26, 1963), Barbara G. Kirk & Marjorie G. Wright, A-30022 (Aug. 20, 1963)

George M. Larsen et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Judgment for defendant Nov. 26, 1979; appeal filed Jan. 18, 1980.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individ. & in his official capacity as Secretary of the Interior, et al., Civil No. A76-44 CIV, D. Alaska. Suit pending.

Anquita L. Kluenter et al., A-30483, Nov. 18, 1965
See Bobby Lee Moore et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser & Leo J. Kottas v. Stewart L. Udall et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd, 432 F.2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum & Cale M. Shearer, A-30838 (Dec. 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall et al., Civil No. 6567, D. Ariz. Judgment for defendant, Jan. 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, Sept. 4, 1974; dismissed, Sept. 11, 1975.

Marlin D. Kuykendall v. Phoenix Area Director & Yavapai-Prescott Tribe, 8 IBIA 76, 87 I.D. 189 (1980)

Yavapai-Prescott Indian Tribe v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV-80-464 PCT-CLH, D. Ariz. Suit pending.

Richard M. Lade, as Attorney in Fact for Santa Fe Pacific R.R., A-29121 (Jan. 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall et al., Civil No. 67-14, D. Or. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd, 432 F.2d 254 (9th Cir. 1970); no petition.

Carolyn W. Laeser, 53 IBLA 336 (1981)

Carolyn W. Laeser v. U.S., James G. Watt, Secretary of the Interior, & Robert Burford, Dir. of BLM, Civil No. C-81-0458J, D. Utah. Suit pending.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, Mar. 6, 1963; aff'd, 324 F.2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch (Appellants), M. S. Land & Livestock Co. (Intervenor), 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, Mar. 12, 1974; aff'd, Mar. 2, 1976; rehearing denied, Apr. 21, 1976; cert. denied, Nov. 1, 1976.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd, 406 F.2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a/ Riverside Resort & Casino, 25 IBLA 41 (1976); On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, Individ. & as Secretary of the Interior, Curt Berklund, Individ. & as Dir., Bureau of Land Management, & H. M. Bruce, Individ. & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977, Civil No. 77-380-PHX-WPC, D. Ariz. Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, Individ. & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F.2d 782 (1969); no petition.

James R. Learned et al., 50 IBLA 416 (1981); reconsideration denied, Jan. 22, 1981

James R. Learned et al. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C81-0009, D. Wyo. Suit pending.

Bruce Lemaire, 63 IBLA 300 (1982)

Bruce Lemaire v. James G. Watt, Civil No. 82-2069. Suit pending.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, Oct. 5, 1964; appeal voluntarily dismissed, Mar. 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd, 427 F.2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis & Mildred C. Lewis, A-28707 (Dec. 30, 1963)

Perley M. Lewis et ux. v. Stewart L. Udall et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, Mar. 22, 1966; aff'd, 374 F.2d 180 (9th Cir. 1967); no petition.

Administrative Appeal of Ruth Pinto Lewis v. Supt. of the Eastern Navajo Agency, 4 IBIA 147, 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individ. & as the Administratrix of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D.N.M. Judgment for plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alaska. Dismissed on merits, Apr. 24, 1964; stipulated dismissal of appeal with prejudice, Oct. 5, 1964.

Roy Lindgren, 43 IBLA 139 (1979)

Roy Lindgren v. Cecil Andrus, Secretary of the Interior, Civil No. C-79-0760 A, D. Utah. Judgment for defendant, Sept. 3, 1980, no appeal.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co. et al. v. Stewart L. Udall, Civil No. 63-264, D. Or. Consolidated with Forsberg v. Udall; Schmand v. Udall; & Property Management Co. v. Udall; Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain. Stipulated dismissal on appeal, Oct. 13, 1966.

Merwin E. Liss et al., 70 I.D. 231 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Floyd O. Lochner, 56 IBLA 271 (1981)

Floyd O. Lochner & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0321, D. Wyo. Suit pending.

Madison D. Locke et al., 65 IBLA 122 (1982)

Madison D. Locke et al. v. James Watt, Secretary of the Interior, et al., Civil No. 82-297 ECR, D. Nev. Suit pending.

Frederick W. Lowey et al., 40 IBLA 381 (1979)

Frederick W. Lowey et al. v. Cecil D. Andrus et al., Civil No. 79-3314.

John A. Gallagher et al. v. Cecil C. Andrus et al., Civil No. 79-3315.

J. E. Ham et al. v. Cecil D. Andrus et al., Civil No. 79-3316.

Dr. Heinz & Ursula Lichtenstein, et al. v. Cecil D. Andrus et al., Civil No. 79-3317.

James M. Ross et al. v. Cecil D. Andrus et al., Civil No. 79-3318.

Richard K. Vitek et al. v. Cecil D. Andrus et al., Civil No. 79-3319.

Actions consolidated; judgment for defendant, May 28, 1981.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

Leland Murray Lucas v. Stewart L. Udall et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, Oct. 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. *Rogers C. B. Morton et al.*, Civil No. 9585, D. Wash. Judgment for defendant, Jan. 14, 1972; *aff'd*, Feb. 26, 1974; no petition.

Frank Lujan, 40 IBLA 184 (1979)

Frank Lujan v. *Dept. of the Interior*, Civil No. CIV-79-455-C, D.N.M. Complaint dismissed, Feb. 11, 1980; appeal filed, Mar. 6, 1980.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey et al. v. *Dept. of Agriculture, BLM, et al.*, Civil No. 1817, D. Mont. Judgment for defendant, Dec. 10, 1970; no appeal.

Joseph MacIsaac et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. *Rogers C. B. Morton*, Civil No. A-6-73, D. Alaska. Dismissed with prejudice for want of prosecution by plaintiff, Dec. 19, 1974.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. *Rogers C. B. Morton*, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); per curiam decision, *aff'd*, 494 F.2d 1156 (D.C. Cir. 1974); no petition.

Richard E. McDonald, Resource Service Co., 56 IBLA 12 (1981)

Richard E. McDonald & Fred L. Engle, d/b/a Resource Service Co. v. *James G. Watt et al.*, Civil No. C81-0288, D. Wyo. Suit pending.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

Sheridan L. McGarry v. *Stewart L. Udall*, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Appeal of Carmel J. McIntyre, 4 ANCAB 24, 86 I.D. 24, 86 I.D. 663 (1979)

Carmel J. McIntyre v. *Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Curtis V. McVee, Alaska State Dir:, BLM, Alaska Native Claims Appeal Board, Eklutna, Inc. & Cook Inlet Region, Inc.*, Civil No. A79-391 CIV, D. Alaska. Suit pending.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. *Udall*, Civil No. 2001-67. Judgment for defendant, Feb. 14, 1968; *aff'd*, 418 F.2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow & Successor in Interest of Patrick A. McKenna, Deceased v. *Walter J. Hickel, Secretary of the Interior, et al.*, Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. *U.S.*, Civil No. 9433, D. Or. Judgment for plaintiff, 178 F. Supp. 913 (1959); *rev'd*, 289 F.2d 908 (9th Cir. 1961).

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (1982)

General Electric Co. & Nellie McLaughlin v. *James G. Watt, Secretary of the Interior*, Civil No. CV-82-93-Blg, D. Mont. Suit pending.

Estate of Alvina Beauvois McLean, IA-D-27 (Feb. 14, 1969); IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. *Walter J. Hickel, Secretary of the Interior*, Civil No. 2721-69, D.C. Judgment for defendant, Mar. 13, 1970; dismissed for lack of prosecution, Apr. 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61, 83 I.D. 145 (1976)

Raymond C. McMaster v. *U.S. Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs*, Civil No. C76-129T, W.D. Wash. Dismissed, June 29, 1978.

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. *Fred A. Seaton*, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); *rev'd*, 281 F.2d 931 (1960); no petition.

Wade McNeil v. *Albert K. Leonard et al.*, Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); Order, Apr. 16, 1962.

Wade McNeil v. *Stewart L. Udall*, Civil No. 678-62. Judgment for defendant, Dec. 13, 1963 (opinion); *aff'd*, 340 F.2d 801 (1964); *cert. denied*, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (Apr. 20, 1967)

Wade McNeil v. *Udall*, Civil No. 2705, D. Mont. Judgment for defendant, Feb. 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. *Marvin Franklin, Acting Secretary of the Interior*, Civil No. 73-481-B, W.D. Okla. Dismissed, Apr. 4, 1974; *aff'd*, Jan. 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. *Rogers C. B. Morton, Secretary of the Interior*, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, Feb. 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974); Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Edward Marcinko, 56 IBLA 289 (1981)

Edward Marcinko v. James Watt, Secretary of the Interior, & Rumar Corp., a Texas Corp., Civil No. C81-320, D. Wyo. Suit pending.

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, Jan. 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, Sept. 25, 1973.

Bill Mathis et al., 61 IBLA 131 (1982)

Western Reserves Oil Co. v. James G. Watt et al., CV82-76-Blg., D. Mont. Suit pending.

Billy Mathis et al., A-30512 (July 6, 1966)

Billy Mathis et al. v. Stewart L. Udall et al., Civil No. 6833, D.N.M. Dismissed with prejudice, Jan. 6, 1967; rendered moot by P.L. 89-365.

George C. Matthews, 19 IBLA 215 (1975)

George C. Matthews v. Executive Dir., BLM, Civil No. 79-1295-CIV-NCR, S.D. Fla. Dismissed, Jan. 21, 1980; no appeal.

Guy A. Matthews, 58 IBLA 246 (1981)

Guy A. Matthews & Willa Matthews v. James Watt, Secretary of the Interior, Civil No. CIV 81-1355, D. Idaho. Suit pending.

Ralph E. May, A-29014 (Jan. 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, Mar. 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, Feb. 8, 1967.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

Allan E. Mecham et al. v. Stewart L. Udall et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd, 369 F.2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian, etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, Nov. 16, 1959; motion for reconsideration denied, Dec. 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered Sept. 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Mesa Petroleum Co., 47 IBLA 66 (1980)

Mesa Petroleum Co. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV-80-288-PCT-CAM, D. Ariz. Suit pending.

Arthur J. Messbauer, 59 IBLA 173 (1981)

Arthur J. Messbauer v. James G. Watt, Secretary of the Interior, et al., Civil No. C-82-0023A, D. Utah. Suit pending.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F.2d 548 (1975).

Michigan Wisconsin Pipeline Co., Inc., 54 IBLA 190 (1981)

Michigan Wisconsin Pipeline Co., Inc. v. James G. Watt, Secretary of the Interior, C. Wendall Steen, Acting Area Oil & Gas Supervisor, MGS, & Theodore Krenzke, Deputy Comm'r of the BIA, Civil No. 81-883D, W.D. Okla. Suit pending.

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, Sept. 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, Nov. 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel et al., Civil No. C-70-2328, D. Cal. Remanded to the Dept. for further proceedings, July 5, 1973; dismissed with prejudice, Feb. 6, 1975.

Suits for Judicial Review

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. *Fred A. Seaton*, Civil No. 346-60. Judgment for defendant, Feb. 23, 1961; *aff'd*, 307 F.2d 676 (1962); *cert. denied*, 371 U.S. 967 (1963); *rehearing denied*, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. *Stewart L. Udall*, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (Aug. 10, 1959); A-28093 *et al.* (Oct. 30, 1959); A-28133 (Dec. 22, 1959); A-28378 (Aug. 5, 1960); A-28258 *et al.* (Feb. 10, 1960)

Duncan Miller v. *Stewart L. Udall*, Civil No. 3470-60. Judgment for defendant, June 23, 1961; *aff'd*, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28057 (Oct. 16, 1959); A-28398 (Aug. 31, 1960); A-28359 (July 18, 1960); A-28433 (Aug. 30, 1960); A-28293, A-28436 (June 7, 1960); A-27897; A-27914; A-27923; A-27930; A-28003; A-28014 (Mar. 31, 1959); A-27810 (Jan. 16, 1959)

Duncan Miller v. *Stewart L. Udall*, Civil No. 3931-60. Judgment for defendant, Apr. 4, 1963; *aff'd*, per curiam dec., Feb. 7, 1964; no petition.

Duncan Miller v. *Stewart L. Udall*, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; *aff'd*, Jan. 12, 1965; no petition.

Duncan Miller, A-28528 *et al.* (Feb. 10, 1960)

Betty J. Lewis v. *Stewart L. Udall*, Civil No. 3904-60. Judgment for defendant, June 23, 1961; *aff'd*, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28509 (Oct. 20, 1960)

Duncan Miller v. *Stewart L. Udall*, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (Feb. 11, 1960); A-28267 (June 8, 1960)

Duncan Miller v. *Stewart L. Udall*, Civil No. 3932-60. Judgment for defendant, May 22, 1963; *aff'd*, Feb. 7, 1964; no petition.

Duncan Miller v. *Stewart L. Udall*, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; *aff'd*, Jan. 12, 1965; no petition.

Duncan Miller, A-28586; A-28633; A-28671; A-28686 (Jan. 25, 1961)

Duncan Miller v. *Stewart L. Udall*, Civil No. 1268-61. Judgment for defendant, Sept. 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. *Stewart L. Udall*, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (Jan. 29, 1962)

Duncan Miller v. *Stewart L. Udall*, Civil No. 1381-62. Judgment for defendant, Nov. 21, 1962 (opinion); appeal dismissed Apr. 12, 1963.

Duncan Miller, A-28937 (Sept. 25, 1962); A-29041 (Nov. 7, 1962)

Duncan Miller v. *Stewart L. Udall*, Civil No. 4003-62. Dismissed for want of prosecution, May 1966.

Duncan Miller, A-29231 (Feb. 5, 1963)
See *Lucille S. West, Duncan Miller, et al.*

Duncan Miller, A-29365 (July 1, 1963); A-29521 (Aug. 29, 1963); A-29633 (Sept. 5, 1963)

Duncan Miller v. *Stewart L. Udall*, Civil No. 2413-63. Dismissed, Oct. 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. *Stewart L. Udall*, Civil No. 931-63. Dismissed for lack of prosecution, Apr. 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. *Stewart L. Udall*, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (Mar. 5, 1964); A-30067 (Mar. 12, 1964)

Duncan Miller v. *Stewart L. Udall*, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (Apr. 8, 1964); A-30192 (Apr. 9, 1964); A-30212 (July 13, 1964)

Duncan Miller v. *Stewart L. Udall*, Civil No. 1829-64. Judgment for defendant, Sept. 28, 1965; no appeal.

Duncan Miller, A-30122 (Sept. 23, 1964); A-30451 (Nov. 17, 1965)

Duncan Miller v. *Stewart L. Udall*, Civil No. 2543-64. Motion to amend granted, Feb. 15, 1966; dismissed, Apr. 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. *Stewart L. Udall*, Civil No. C-153-65, D. Utah. Judgment for defendant, Nov. 15, 1965; *aff'd*, 368 F.2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. *Stewart L. Udall*, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, Oct. 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed Apr. 12, 1968; petition for mandamus denied, Oct. 14, 1968.

Duncan Miller, A-30517 (Apr. 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, Aug. 11, 1966; appeal dismissed, Sept. 14, 1967.

Duncan Miller, A-30546 (Aug. 10, 1966); A-30566 (Aug. 11, 1966); 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, Apr. 17, 1967; no appeal.

Duncan Miller, A-30570 (Aug. 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alaska. Judgment for defendant, Mar. 13, 1967; motion for reconsideration denied, Sept. 19, 1967; no appeal.

Duncan Miller, A-29231 (Feb. 5, 1963) See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (Nov. 8, 1966)

Duncan Miller v. Dir. of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, Apr. 25, 1969; no appeal.

Duncan Miller, A-30628 (Nov. 16, 1966); A-30684 (Jan. 19, 1967); A-30708 (Nov. 16, 1966); A-30797 (Sept. 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D.N.M. Dismissed with prejudice, Aug. 28, 1968; motion to set aside judgment denied, Sept. 24, 1968; motion for reconsideration denied, Nov. 4, 1968.

Duncan Miller, A-30891 (Mar. 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, Oct. 14, 1968; no appeal.

Duncan Miller, A-30924 (Nov. 13, 1968); A-30934 (Nov. 22, 1968); A-30966 (Oct. 29, 1968); A-31054 (Aug. 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, Jan. 6, 1972; motion for reconsideration denied, Feb. 7, 1972.

Duncan Miller, A-31087 (Feb. 4, 1970); A-31095 (Feb. 2, 1970); A-31148 (Mar. 2, 1970); A-31159 (Mar. 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, Jan. 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, Nov. 2, 1973; motion for rehearing denied, Nov. 14, 1973; appeal dismissed, Feb. 8, 1974.

Duncan Miller, 6 IBLA 283 (1972); 6 IBLA 507 (1972); 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, Feb. 7, 1973; motion to set aside judgment denied, Mar. 5, 1973.

Duncan Miller, 7 IBLA 343 (1972); 16 IBLA 24 (1974); 16 IBLA 71 (1974); 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Dept. of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, Dec. 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, Oct. 31, 1974; motion to amend complaint denied, Dec. 18, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Dept. of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Admin. Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, Oct. 30, 1973; motions for reconsideration denied respectively, Dec. 4, 1973, Jan. 4, 1974, Apr. 5, 1974; appeal dismissed, & Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973); IBLA 73-319, 406, 407, 410, 411, 412; IBLA 74-12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Dept. of the Interior, Civil No. 1929-73. Dismissed, Feb. 15, 1974; appeal dismissed, Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Suits for Judicial Review

Duncan Miller, 12 IBLA 201 (1973); 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974); Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Dept. of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, Oct. 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975); 19 IBLA 188 (1975); 20 IBLA 1 (1975); 20 IBLA 9 (1975); 20 IBLA 19 (1975); 21 IBLA 50 (1975); 22 IBLA 52 (1975); IBLA 75-379 (dismissed by Order, Mar. 20, 1975); IBLA 75-365 (dismissed by Order, Mar. 24, 1975); IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by Orders, Apr. 30, 1975); IBLA 75-278 (dismissed by Order, May 22, 1975)
See also Evelyn R. Robertson

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, Aug. 8, 1975; reconsideration denied, Sept. 16, 1975. Appeal dismissed, Oct. 12, 1976.

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individ. & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, Dec. 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, Civil No. 77-2165. Judgment for defendant, Nov. 30, 1978; no appeal.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan et al. v. Warren J. Gray et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, Nov. 13, 1967: aff'd, 413 F.2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough et al., Civil No. C-200-63, D. Utah. Judgment for defendant, Jan. 8, 1964; no appeal.

Donald E. Monington, 42 IBLA 380 (1979)

Donald E. Monington v. Cecil D. Andrus, Secretary of the Interior, & Delmar D. Vail, Acting State Dir., BLM, Civil No. C79-366, D. Wyo. Aff'd.

Monsanto Co., 51 IBLA 271 (1980)

Monsanto Co. v. James Watt, Secretary of the Interior, Civil No. 81-A-272, D. Colo. Judgment for plaintiff, Jan. 5, 1982.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083 (9th Cir.). Dismissed for lack of jurisdiction, Apr. 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, Apr. 11, 1974.

Bobby Lee Moore et al., 72 I.D. 505 (1965)
Anquita L. Kluenter et al., A-30483 (Nov. 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration et al., Civil No. 3253, S.D. Cal. Judgment for defendant, Apr. 12, 1965; aff'd, 377 F.2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, Feb. 20, 1961 (opinion); aff'd, 306 F.2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., Inc., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r, 345 F.2d 833 (1965); Commr's report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F.2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on Oct. 6, 1969; judgment for plaintiff, Feb. 17, 1970.

Jack M. Mosely, Charles S. Hertz, 62 IBLA 220 (1982)

Jack M. Mosely, Charles S. Hertz v. DOI et al., Civil No. 82-1560. Suit pending.

Mildred A. Moss et al., 28 IBLA 364 (1977);
Reconsideration denied, Mar. 18, 1977

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Dir., Bureau of Land Management & Raul E. Martinez, Chief, Minerals Section, Bureau of Land Management, Civil No. CIV 77-234 B, D.N.M. Judgment for defendant, Nov. 1, 1977; aff'd, Sept. 20, 1978.

Mountain Enterprises Coal Co., 3 IBSMA 338, 88 I.D. 861 (1981)

Mountain Enterprises Coal Co. v. Secretary of the Interior, Civil No. 81-0325-B, W.D. Va. Suit pending.

Estate of Winnie Moves Camp, 7 IBIA 266 (1979)

James Moves Camp, Bernard Moves Camp, Annie Moves Camp Bad Cobb & Mary Moves Camp Between Lodges v. Cecil Andrus, Secretary of the Interior, Civil No. 80-5020, D.S.D. Suit pending.

Glenn Munsey, Earnest Scott & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 206 (1972); 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-2095, U.S. Ct. of Appeals, D.C. Cir. Vacated & remanded, 507 F.2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 84 I.D. 336 (1977)

Glenn Munsey v. Cecil D. Andrus, No. 77-1619, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Naartex Consulting Corp., 48 IBLA 166

Naartex Consulting Corp. v. James G. Watt et al., Civil No. 81-1540. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Morris Thompson, Comm'r of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Judgment for defendant, Jan. 20, 1978; aff'd, 638 F.2d 113 (9th Cir. 1981), no petition.

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo & Frederick Fishman, Members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Dismissed with prejudice, Jan. 4, 1979.

Charles Y. Neff, 64 IBLA 234 (1982)

Charles Y. Neff v. James G. Watt & Fred Gibson, Civil No. C82-0337, D. Wyo. Suit pending.

Nevada Pacific Co., 46 IBLA 208 (1980)

Nevada Pacific Co. et al. v. Cecil D. Andrus, Secretary of the Interior, U.S., Civil No. CV-LV 80-431 HEC, D. Nev. Suit pending.

Richard L. Nevitt, 47 IBLA 257 (1980)

Richard L. Nevitt v. Cecil D. Andrus, Secretary of the Interior, Curtis McVee, Acting State Dir., Alaska, BLM, Civil No. A80-226 CIV, D. Alaska. Suit pending.

New England Fish Co., 42 IBLA 200 (1979)

New England Fish Co. v. Robert E. Sorenson, Chief, Branch of Lands & Minerals Operations BLM, Alaska State Office, Dept. of the Interior, Civil No. A79-283 CIV, D. Alaska. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alaska. Judgment for defendant, Sept. 17, 1965; aff'd, 385 F.2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger (Appellant), Paul C. Kohlman (Appellee), 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, Mar. 20, 1975; no appeal.

N. L. Baroid Petroleum Services, 60 IBLA 90 (1981)

NL Industries, Inc. v. James Watt, Civil No. CV-LV-82-176 RDF, D. Nev. Suit pending.

Leonard E. Noren, A-27583 (Sept. 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, Sept. 17, 1965; rev'd & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren et al.; rev'd & remanded, 370 F.2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's report adverse to U.S. issued Dec. 10, 1971; judgment for plaintiff, 458 F.2d 64 (1972).

Northwest Citizens for Wilderness Mining, 33 IBLA 317 (1978)

Northwest Citizens for Wilderness Mining Co. v. The Bureau of Land Management & Edna A. Haverland, Individ. & Chief, Branch of Records & Data Management, BLM, Civil No. 78-46-M, D. Mont. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, Nov. 15, 1963; case reinstated, Feb. 19, 1964; remanded, Apr. 4, 1967; rev'd & remanded with directions to enter judgment for appellant, 389 F.2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Administrator of Estate of Valentine M. O'Grady, 47 IBLA 83 (1980)

Thomas James O'Grady et al. v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 80-1782. Suit pending.

Oil & Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alaska. Withdrawn Apr. 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alaska. Dismissed, Apr. 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alaska. Dismissed, Oct. 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alaska. Dismissed, Oct. 29, 1963 (oral opinion); aff'd, 332 F.2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alaska. Dismissed without prejudice, Mar. 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977)

Oil Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Dept. of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, Apr. 9, 1976.

Old Ben Coal Corp., 81 I.D. 428; 436; 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals et al., Nos. 74-1654, 74-1655, 74-1656, U.S. Ct. of Appeals for the 7th Cir. Board's decision aff'd, 523 F.2d 25 (7th Cir. 1975).

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, U.S. Ct. of Appeals, D.C. Cir. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (Apr. 19, 1966); A-30488 (Supp.) (Dec. 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, Aug. 12, 1966; Order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, Mar. 8, 1967; no appeal; stipulated dismissal, Nov. 22, 1971.

Clarence C. Ore et al., 4 OHA 125 (1981). Order staying decision dated Mar. 27, 1981; Order modifying decision dated June 18, 1981. Petition for reconsideration denied by Order dated July 28, 1981.

Bernice Beatty et al. v. BLM, Dept. of the Interior, & U.S., Civil No. 81-1066-K-I, S.D. Cal. Suit pending.

Oregon Portland Cement Co., 66 IBLA 204 (1982)

Oregon Portland Cement Co. v. James G. Watt, Secretary of the Interior, et al., Civil No. 82-1087, D. Or. Suit pending.

Appeal of Ounalashka Corp., 1 ANCAB 104, 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of the Interior, & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alaska. Suit pending.

Oyate, Inc. et al., IA-2629

Oyate, Inc., a nonprofit South Dakota Corp., et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, Jan. 7, 1974.

Pacific Power & Light Co., 45 IBLA 127 (1980)

Pacific Power & Light Co. v. Cecil Andrus, Secretary of the Interior, Civil No. C80-0073, D. Wyo. Suit pending.

D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); On Reconsideration, 38 IBLA 23, 85 I.D. 408 (1978)

John S. Runnells v. Cecil Andrus, Secretary of the Interior, et al., Civil No. C-77-0268, D. Utah. Rev'd & remanded to Bureau of Land Management for issuance of the leases, Feb. 19, 1980; no appeal.

Elizabeth Pagedas, 38 IBLA 130 (1978); On Reconsideration, 40 IBLA 21 (1979)

Elizabeth Pagedas, Athena Pagedas, Kap Bae, Anna Srantos & Fred Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. 79-2456. Suit pending.

Eugene C. Paine et al., A-27632 (Aug. 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, Sept. 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, Jan. 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd & remanded, Feb. 23, 1961; Judgment for defendant, Mar. 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (Sept. 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, Dec. 16, 1970; rev'd, 496 F.2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (Dec. 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent admin. appeal & supplemental complaint filed; judgment for plaintiff, Feb. 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710 (1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052, U.S. Ct. of Appeals, D.C. Cir. Voluntary dismissal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, Dec. 19, 1958.

Peabody Coal Co., 34 IBLA 139; 36 IBLA 242 (1978)

Peabody Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, Frank Gregg, Dir. Bureau of Land Management, Civil No. C78-161, D. Wyo. Judgment for plaintiff, Sept. 19, 1979; no appeal.

Mary C. Pemberton, 38 IBLA 118 (1978)

Mary C. Pemberton v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-95-BLG, D. Mont. Suit pending.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F.2d 722 (1970).

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, Sept. 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, Dec. 1, 1975; no appeal.

Frederick T. Peters et al., 41 IBLA 262 (1979)

Stewart Capital Corp., Cynthia S-H Bowers, Marvyn Carton, William Feick, Jr., Amey M. Harrison, Kenneth K. Kohrs, Phyllis Johnston, Barbara Michaels, Frederick T. Peters, R. J. Russette, Rharrc Associates, Donald Beck, Sherwin Gandee, Irwin Kramer & Joseph Fiato v. Raul Martinez, Chief, Mineral Section, New Mexico State Office, BLM, Civil No. CIV-79-042C, D.N.M. Dismissed Oct. 28, 1980.

Kent E. Peterson, 30 IBLA 199 (1977)

Kent E. Peterson v. Cecil Andrus, Secretary of the Interior, Curt Berklund, Dir. BLM, Robert O. Buffington, State Dir., BLM, Idaho, Civil No. C-79-0527, D. Utah. Suit pending.

M. Blaine Peterson, A-28111 (Nov. 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, Nov. 13, 1961; no appeal.

Virgil V. Peterson & Hiko Bell Mining & Oil Co., 37 IBLA 18 (1978)

Virgil V. Peterson v. The Dept. of Interior & Cecil D. Andrus, Secretary of the Interior, Civil No. C 78-0463, D. Utah. Suit pending.

Hiko Bell Mining & Oil Corp. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, & Frank Gregg, Dir., Bureau of Land Management, Civil No. C78-0465, D. Utah. Suit pending.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1959)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F.2d 793 (1968).

City of Phoenix v. Alvin B. Reeves et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as Heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a Municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, Aug. 9, 1974; reconsideration denied, Sept. 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, Aug. 2, 1962; aff'd, 317 F.2d 573 (1963); no petition.

Suits for Judicial Review

Earl W. Platt, 43 IBLA 41, 86 I.D. 458 (1979)

Barbara Garcia v. Cecil Andrus, Secretary of the Interior, Earl W. & Buena Platt, Civil No. CIV-80-382 PCT, D. Ariz. Suit pending.

Platte Valley Construction Co., IBCA-168 (Aug. 28, 1958)

George Stanek et al. v. U.S., Ct. Cl. 189-72. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, Dec. 31, 1980.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, U.S. Ct. of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (Jan. 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, Aug. 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, Dec. 7, 1964.

L. O. Power et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX-WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (Aug. 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975); 26 IBLA 340 (1976) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D.N.M. Remanded to the Dept., Apr. 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D.N.M. Remanded to the Dept., Apr. 6, 1976; judgment for defendants, May 5, 1977.

R. E. Puckett, A-30419 (Oct. 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, Aug. 15, 1966.

Estate of Henry Frank Racine, 7 IBIA 1 (1978); 8 IBIA 251 (1981)

Martha Alfreda Racine Crawford et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CV-78-8-6F, D. Mont. Dismissed July 13, 1979; rev'd & remanded, Oct. 30, 1980; remanded to IBIA Feb. 24, 1981.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, Oct. 30, 1969; dismissed, Nov. 17, 1970.

Ram Petroleums, Inc., & Ramoco, Inc., 37 IBLA 184 (1978)

Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of the IBLA; rev'd, 478 F. Supp. 1165 (D. Nev. 1979); appeal filed, Dec. 21, 1979.

Ramoco, Inc., & Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of IBLA & L. Pollick, Chief Minerals Section, Utah State Office of BLM, Civil No. C-79-0007, D. Utah. Judgment for defendants, Nov. 14, 1979; aff'd, May 27, 1981.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, Aug. 11, 1975; no appeal.

Stuart Grant Ramstad, 55 IBLA 223 (1981); Reconsideration denied, Order dated Sept. 30, 1981

Stuart Grant Ramstad v. James G. Watt et al., Civil No. A81-458 CIV, D. Alaska. Suit pending.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, Dec. 13, 1968; subsequent Contract Officer's dec., Dec. 3, 1969; interim dec., Dec. 2, 1969; Order to Stay Proceedings until Mar. 31, 1970; dismissed with prejudice, Aug. 3, 1970.

Estate of Elgin Red Elk, IA-1230 (Nov. 13, 1964)

Bert Taunah et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, Apr. 27, 1967; rev'd & remanded, 398 F.2d 795 (10th Cir. 1968); no petition.

Redwood Empire Land & Royalty Co., 62 IBLA 296 (1982)

Redwood Empire Land & Royalty Co. v. James G. Watt, no Civil No., D. Colo.

Redwood Empire Land & Royalty Co., 64 IBLA 267 (1982)

Redwood Empire Land & Royalty Co. v. James Watt et al., Civil No. 82-174 Blg., D. Mont. Suit pending.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326, 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton et al., Civil No. 1105, D. Mont. Dismissed June 14, 1973; no appeal.

Henry E. Reeves, 31 IBLA 242 (1977)

Henry E. Reeves v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. A-158-73 Civ, D. Alaska. Partial judgment for plaintiff, 465 F. Supp. 1065 (1979); rev'd, Oct. 30, 1980; appeal dismissed Apr. 14, 1981.

Reichhold Energy Corp., 40 IBLA 134 (1979)

Reichhold Energy Corp. v. Cecil D. Andrus, Civil No. 79-1274. Judgment for defendant, May 30, 1980; appeal filed.

Reitz Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement (Respondent), 2 IBSMA 381 (1980)

Reitz Coal Co. v. Cecil D. Andrus, Civil No. 80-1832, W.D. Pa. Suit pending.

Reliable Coal Corp., 1 IBMA 97, 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1477, U.S. Ct. of Appeals, 4th Cir. Board's decision aff'd, 478 F.2d 257 (4th Cir. 1973).

Republic Steel Corp., 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, Feb. 22, 1978.

Resource Service Co., Grace K. Greco, 55 IBLA 343 (1981)

Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C80-2080, D. Wyo. Suit pending.

William C. Reuling, 59 IBLA 226 (1981)

William C. Reuling v. James Watt et al., Civil No. C82-0058-C, D.N.M. Suit pending.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, Apr. 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, Mar. 6, 1958; no appeal.

Simon A. Rife, 56 IBLA 378 (1981)

Simon A. Rife v. James G. Watt et al., Civil No. C81-0318, D. Wyo. Suit pending.

Riley Hall Coal Co. (Petitioner) v. Office of Surface Mining Reclamation & Enforcement, 1 IBSMA 292 (1979)

Riley Hall Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-213, E.D. Ky. Suit pending.

Mark B. Ringstad et al., Inlet Oil Corp. et al., Robert L. Lawler et al., A-31111; A-31115; A-31134; A-31188 (Mar. 17, 1970)

Robert Lawler et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alaska.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alaska. Stipulated dismissal without prejudice, Aug. 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, Feb. 22, 1972; no appeal.

LaPreal C. Rinker, IBLA 81-845, Order dated Oct. 23, 1981

LaPreal C. Rinker v. James Watt, Secretary of the Interior, et al., Civil No. Civ-82-0065 HB, D.N.M. Suit pending.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965); reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971); 2 IBIA 33, 80 I.D. 390 (1973)

Oneta Lamb Robedeaux et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, Jan. 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, Oct. 29, 1973; amended judgment for plaintiff, Nov. 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, Apr. 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, Oct. 2, 1975; judgment for plaintiff, Dec. 1, 1975.

Roberts Brothers Coal Co., 2 IBSMA 284, 87 I.D. 439 (1980)

Roberts Brothers Coal Co. v. Cecil D. Andrus et al., Civil No. 80-016900 (G), W.D. Ky. Suit pending.

Suits for Judicial Review

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963) (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, Mar. 13, 1964; aff'd, 349 F.2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alaska. Dismissed with prejudice, Sept. 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, Apr. 4, 1964; aff'd, 349 F.2d 195 (1965); no petition.

Estate of Clark Joseph Robinson, 7 IBIA 74, 85 I.D. 294 (1978)

Rene Robinson, by & through her Guardian Ad Litem, Nancy Clifford v. Cecil Andrus, Secretary of the Interior, Gretchen Robinson & Trixi Lynn Robinson Harris, Civil No. CIV-78-5097, D.S.D. Suit pending.

George Rodda, Jr., 27 IBLA 186 (1976); 37 IBLA 189 (1978)

Norman Lewis McBride (Assignor) & George Rodda, Jr. (Assignee) v. Secretary of the Interior, Roy Maggart, an Individual, Eldon J. Fairbanks, an Individual, Civil No. CIV 79-96 TUC-MAR, D. Ariz. Suit pending.

M. E. Rogers, 47 IBLA 196 (1980)

M. E. Rogers v. U.S., Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., BLM, Civil No. 80-114-H, D. Mont. Suit pending.

Rosebud Coal Sales Co., 37 IBLA 251, 85 I.D. 396 (1978)

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir., Bureau of Land Management, & Maria B. Bohl, Chief, Land & Mining, Bureau of Land Management, Wyo., Civil No. C78-261, D. Wyo. Judgment for plaintiff, Oct. 17, 1979. No appeal.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in His Official Capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Edgar Rundle, A-29593 (Aug. 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, Sept. 22, 1965; aff'd, 379 F.2d 112 (1967); cert. denied, 389 U.S. 845 (1967)

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Alex Sachen, Resource Service Co., 56 IBLA 116 (1981)

Alex & Mary Jane Sachen & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. C-81-0298, D. Wyo. Suit pending.

Louise Safarik, A-28307 et al. (Apr. 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Louise Safarik et al., A-28562 et al. (Jan. 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Management, Civil No. A-173-73 CIV, D. Alaska. Dismissed, Mar. 4, 1975; reinstated by court order, Apr. 9, 1975; remanded to the Bureau of Land Management for proceedings, Mar. 19, 1976.

Louis Samuel et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D.N.M. Dismissed with prejudice, Jan. 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Management, & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, Oct. 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton et al., Civil No. 03266, E.D. Mich. Dismissed, Feb. 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, Aug. 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd sub nom. S. Jack Hinton et al. v. Stewart L. Udall, 364 F.2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, Nov. 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D.N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed Jan. 12, 1966; order vacating prior judgment issued Jan. 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (Apr. 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen et al., Civil No. 7135, D.N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, Individ. & as Secretary of the Interior, Daniel P. Baker, Individ. & as Dir. for the State of Wyo., Bureau of Land Management, & Glenna M. Lane, Individ. & as Chief, O&G Section, Land Office, Wyo., Civil No. 5949, D. Wyo. Dismissed, Nov. 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., supra, filed June 3, 1974.

Lloyd Schade, 12 IBLA 316 (1973)

Lloyd Schade v. Cecil Andrus, Secretary of the Interior, State of Alaska, Civil No. A-76-28, D. Alaska. Judgment for plaintiff, Oct. 2, 1978; aff'd, 638 F.2d 122 (9th Cir. 1981).

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (Aug. 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, Apr. 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (Jan. 8, 1964); reconsideration denied, Mar. 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814; A-30816 (Nov. 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, Oct. 31, 1968; aff'd, 419 F.2d 663 (1969); petition for rehearing en banc denied, Oct. 8, 1969; no petition.

Joseph M. Schuck, A-28603 (Aug. 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, Dec. 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, Jan. 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, Mar. 19, 1962; no appeal.

Seal & Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, Jan. 31, 1964; no appeal.

Robert Semanko, Mary L. Hollebon, Resource Service Co, Inc., 58 IBLA 340 (1981)

Robert Semanko, Mary L. Hollebon, & Fred L. Engle, d/b/a Resource Service Co. v. James G. Watt et al., Civil No. 82-0165. Suit pending.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

John J. Sexton, 15 IBLA 69 (1974); On Reconsideration, 20 IBLA 187 (1975)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alaska. Dismissed, Jan. 5, 1977.

William D. Sexton et al., 9 IBLA 316 (1973); R. C. Bailey et al., 7 IBLA 266 (1972); R. C. Bailey & C. Burglin, 10 IBLA 281 (1973); Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973); Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton et al., Civil No. F-9-73, D. Alaska.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alaska.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alaska.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alaska.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, Aug. 5, 1974; aff'd, 527 F.2d 486 (9th Cir. 1976); cert. denied, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, U.S. Ct. of Appeals, 4th Cir. Suit pending.

John W. Shaw, A-29143 (Apr. 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Or. Aff'd, 264 F. Supp. 390 (1967); appeal docketed Mar. 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Dir. of the New Mexico State Office of the Bureau of Land Management, Civil No. CIV-76-338-P, D.N.M. Judgment for defendant, Feb. 22, 1977; aff'd, Sept. 17, 1977.

Shell Oil Co., A-30575 (Oct. 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal, Aug. 19, 1968.

Estate of Albin (Alvin) Shemany, 7 IBIA 70 (1978)

Edward, Clara & Alice Longhat v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 78-0929-D, W.D. Okla. Judgment for defendant, Dec. 31, 1979; appeal filed Jan. 21, 1980.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd, 432 F.2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), No. 75-1292, U.S. Ct. of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F.2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D.N.M. Judgment for plaintiff, Aug. 7, 1975 (opinion); no appeal.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (1979)

Karen Hayes, Administratrix of the Estate of Keith C. Hayes, Deceased, Dorothy Smith v. Cecil Andrus, Secretary of the Interior, Civil No. C-LV-79-369-HEC, D. Nev. Dismissed (1981).

Eldon L. Smith, A-30944 (Oct. 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, Feb. 3, 1970.

Geneiva Nell Maston Smith et al., 48 IBLA 199 (1980)

Moss J. Witt v. U.S. et al., Civil No. Civ-LV-210, RDF, D. Nev. Judgment for defendant, Feb. 13, 1981; appeal filed Feb. 20, 1981.

James W. Smith, 34 IBLA 146 (1978)

James W. Smith v. U.S., Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Edward L. Hastey, as California State Dir., BLM, Civil No. 79-0042-E, S.D. Cal. Suit pending.

L. B. Smith et al., A-30447 (Oct. 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Mardelle M. Smith, Sherman C. Smith, 42 IBLA 136 (1979)

Mardelle M. & Sherman C. Smith v. Cecil Andrus, Secretary of the Interior, Robert Bergland, Secretary of Agriculture, Clay Beal, Supervisor, Chugach Nat'l Forest, Curtis McVee, Alaska State Dir., BLM, Civil No. A80-050 CIV, D. Alaska. Judgment for defendant, May 8, 1981, aff'd, Sept. 21, 1982. No petition.

George Val Snow, 46 IBLA 101 (1980)

George Val Snow & Kathleen Snow v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. C80-0231A, C.D. Utah. Suit pending.

Stanley C. Soho, A-28135 (Aug. 19, 1959); A-28135 Supp. (July 17, 1961); supplemented by decision dated Feb. 1, 1963, by Dir., Bureau of Land Management, approved by the Secretary Mar. 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, Sept. 3, 1963; aff'd, 336 F.2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho et al., A-28175 (Apr. 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, Jan. 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management, Civil No. C77-250, D. Wyo. Aff'd, Sept. 12, 1978.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, Dec. 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970); 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, Heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supplemental complaint filed, Aug. 1, 1975; judgment for defendant, Nov. 29, 1976; appeal filed, Jan. 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (Jan. 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd, 371 F.2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, Jan. 14, 1970; appeal dismissed, Apr. 6, 1970.

Southwestern Petroleum Corp. et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D.N.M. Judgment for defendant, Mar. 8, 1965; aff'd, 361 F.2d 650 (10th Cir. 1966); no petition.

Ervin Staacke et al., 62 IBLA 278 (1982)

Rose May Foley et al. & Resource Service Co., Inc. v. James G. Watt et al., Civil No. 82-1642. Suit pending.

Geosearch, Inc., Robert G. Scholl & Richard Doerr v. James G. Watt et al., Civil No. 82-0240, D. Wyo. Suit pending.

Standard Oil Co. of California et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel et al., Civil No. A-159-69, D. Alaska. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd sub nom. Standard Oil Co. of California v. Rogers C. B. Morton et al., 450 F.2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D.N.M. Judgment for plaintiff, Jan. 21, 1965; no appeal.

John Walter Starks, 55 IBLA 266 (1981)

John Walter Starks v. James G. Watt, Civil No. C-81-0711C, D. Utah. Dismissed with prejudice, Mar. 2, 1982. No appeal.

Starling Brokers et al., 6 IBLA 237 (1972)

Hillin L. Arnold et al. v. Rogers C. B. Morton et al., Civil No. A-157-72 Civ., D. Alaska Judgment for defendant, Mar. 20, 1974; rev'd & remanded, 529 F.2d 1101 (9th Cir. 1976); aff'd, June 29, 1981; no petition.

Stauffer Chemical Co. et al., 49 IBLA 381 (1980)

Monsanto Co., J. R. Simplot Co., Beker Industries Corp., & Stauffer Chemical Co. v. James G. Watt, Secretary of the Interior, et al., Civil No. Civ 81-4013, D. Idaho. Suit pending.

Ross Stegman, A-30812 (Nov. 21, 1967); U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, Dec. 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & Real Party in Interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, Sept. 10, 1975; rev'd, Oct. 26, 1978.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. *Walter J. Hickel et al.*, Civil No. 8074, D.N.M. Judgment for defendant, Jan. 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; *aff'd*, 444 F.2d 200 (10th Cir. 1971); no petition.

Joe Stewart, 33 IBLA 225 (1977)

Joe Stewart v. *Cecil D. Andrus, Secretary of the Interior*, Civil No. 78-1038, D. Idaho. Suit pending.

Nancy L. Stewart, Resource Service Co., 56 IBLA 122 (1981)

Nancy L. Stewart & Fred L. Engle, d/b/a Resource Service Co. v. *James G. Watt et al.*, Civil No. C-81-0299, D. Wyo. Suit pending.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. *U.S. & Dept. of the Interior et al.*, Civil No. LV-2112, D. Nev. Judgment for defendant, Aug. 29, 1975; amended Order judgment for defendant, Sept. 4, 1975.

Bernard S. Storper, 60 IBLA 67 (1981)

Bernard S. Storper v. *James G. Watt et al.*, Civil No. 82-0449. Suit pending.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. *The Dept. of the Interior, Bureau of Land Management*, Civil No. A74-103, D. Alaska. Remanded to the Dept., May 6, 1976; *aff'd*, in part, rev'd & remanded in part, Sept. 8, 1981.

Marta F. Stroock, 63 IBLA 119 (1982)

Marta F. Stroock v. *James Watt, Secretary of the Interior, et al.*, Civil No. NC-82-0093W, D. Utah. Suit pending.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (1981)

Atlantic Richfield Co. v. *James G. Watt, Secretary of the Interior*, Civil No. CIV 81-0615 M, D.N.M. Suit pending.

Supron Energy Corp. et al., 46 IBLA 181 (1980)

Conoco, Atlantic Richfield Co., & Tenneco Oil Co. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-80-0261M, D.N.M.

Exxon Co., U.S.A. v. *Cecil D. Andrus, Secretary of the Interior*, Civil No. Civ-80-430-JB, D.N.M.

Supron Energy Corp., Southland Royalty Co., & Consolidated O&G Co. v. *Cecil D. Andrus, Secretary of the Interior*, Civil No. Civ-80-0463 JB, D.N.M.

Actions consolidated Nov. 16, 1980. Suit pending.

Florence Emily Tagala v. *Amanda Nellie Ruth Price*, A-30715 (Nov. 10, 1966); *Florence Emily Tagala* v. *Norman C. Gorsuch, Special Administrator of the Estate of Amanda Price*, A-31241 (Jan. 9, 1970)

Amanda Price v. *Udall*, Civil No. 33-67, D. Alaska. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F.2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. *Stewart L. Udall*, Civil No. 1852-62. Judgment for defendant, Nov. 1, 1962 (opinion); *rev'd*, 324 F.2d 411 (1963); *cert. granted*, 376 U.S. 961 (1964); Dist. Ct. *aff'd*, 380 U.S. 1 (1965); *rehearing denied*, 380 U.S. 989 (1965).

Appeal of Tanacross, Inc., 4 ANCAB 173, 87 I.D. 123 (1980)

Tanacross, Inc. v. *James G. Watt et al.*, Civil No. A82-005 CIV, D. Alaska. Suit pending.

Texaco, Inc., 75 I.D. 8 (1968)

Texaco, Inc., a Corp. v. *Secretary of the Interior*, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); *aff'd in part & remanded*, 437 F.2d 636 (1970); *aff'd in part & remanded*, July 19, 1972.

Texas Construction Co., 64 I.D. 97; *reconsideration denied*, IBCA-73 (June 18, 1957)

Texas Construction Co. v. *U.S.*, Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, Dec. 14, 1961.

Estate of Tim Tieyah, 7 IBIA 234 (Oct. 17, 1979)

Marie Tieyah Carr v. *Cecil Andrus, Secretary of the Interior*, Civil No. CIV 79-1300-D, D. Okla. Suit pending.

Ray H. Thames, 30 IBLA 167 (1977)

Maude E. McDonald & Harriet S. Walsh v. *Cecil Andrus, Secretary of the Interior, Edward W. Stuebing, Douglas E. Henriques, & Martin Ritvo, Admin. Judges Interior Board of Land Appeals, Lowell J. Udy, Dir. of Lands & Minerals, ESLO, BLM*, Civil No. S77-0333(C), S.D. Miss. Judgment for defendant, Jan. 29, 1980; *rev'd & remanded*, Aug. 21, 1982; judgment for plaintiff, Feb. 19, 1982.

Albert Thomas et ux. (Contestees) v. *Sam A. DeVilbiss et ux. (Contestants)*, 10 IBLA 56 (1973)

Albert & Ellora Thomas v. *Rogers C. B. Morton, Secretary of the Interior, et al.*, Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); *aff'd*, 552 F.2d 871 (9th Cir. 1977).

Suits for Judicial Review

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, Sept. 18, 1958; aff'd, 270 F.2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Rupert Thorne, 58 IBLA 319 (1981)

Rupert Thorne v. James Watt, Secretary Interior, Civil No. 82-1019, D. Idaho. Suit pending.

Thoroughfare Coal Co., 3 IBSMA 72, 88 I.D. 406 (1981)

Thoroughfare Coal Co. v. James G. Watt, Secretary of the Interior, Civil No. C81-0068, W.D. Ky. Suit pending.

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D.N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall et al., Civil No. 2406-61. Judgment for defendant, Mar. 22, 1962; aff'd, 314 F.2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd, 350 F.2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, Aug. 2, 1962; aff'd, 350 F.2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, Sept. 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties, Inc., d/b/a Toke Cleaners & Launderers v. U.S., Dept. of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D.N.D. Stipulation for dismissal & Order dismissing case, June 16, 1975.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341, 87 I.D. 570 (1980)

Tollage Creek Elkhorn Mining Co. v. Cecil D. Andrus, Civil No. 80-230, E.D. Ky. Suit pending.

Estate of Phillip Tooisgah, 4 IBIA 189, 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Dismissed, 418 F. Supp. 913 (1976). No appeal.

TOSCO v. Secretary of the Interior
See Union Oil Co., 71 I.D. 169 (1964)

Tree Land Nursery, Inc., IBCA-436 (Oct. 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

William M. Turner, 54 IBLA 111 (1981)

William M. Turner v. James G. Watt, Civil No. 81-0832JB, D.N.M. Suit pending.

Tyee Construction Co., IBCA-112 & 113 (Apr. 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co., 56 IBLA 206; reconsideration granted, 58 IBLA 166 (1981)

Union Oil Co. of California v. James G. Watt et al., Civil No. 82-427, D. Ariz. Suit pending.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968); 76 I.D. 69 (1969)

The Superior Oil Co. et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd, 409 F.2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, Dec. 27, 1965; no appeal.

Union Oil Co. of California, 48 IBLA 145; reconsideration granted, Order dated Oct. 7, 1980.

Union Oil Co. of California v. Cecil D. Andrus, Civil No. 80-2278. Interior Board of Land Appeals remanded the case with instructions to consider the appeal on its merits.

Suits for Judicial Review

Union Oil Co. of California et al., 71 I.D. 169 (1964); 72 I.D. 313 (1965); U.S. v. Bohme; U.S. v. Exxon Corp.; U.S. v. Brown, 48 IBLA 267, 87 I.D. 248 (1980); 51 IBLA 97, 87 I.D. 535 (1980)

Penelope Chase Brown et al. v. Stewart Udall, Civil No. 9202, D. Colo.

Barnette T. Napier et al. v. Secretary of the Interior, Civil No. 8691, D. Colo.

The Oil Shale Corp. et al. v. Secretary of the Interior, Civil No. 8680, D. Colo.

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil No. 8685, D. Colo.

Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo.

Harlan H. Hugg et al. v. Stewart L. Udall, Civil No. 9252, D. Colo.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo.

The Oil Shale Corp. et al. v. Stewart L. Udall, Civil No. 9465, D. Colo.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo.

Order to Close Files & Stay Proceedings, Mar. 25, 1967.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd, 289 F.2d 790 (1961); no petition.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd, 379 F.2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

United Mine Workers of America v. Inland Steel Co., 83 I.D. 87 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1377, U.S. Ct. of Appeals, 7th Cir. Board's decision aff'd, 561 F.2d 1258 (7th Cir. 1977).

United Mine Workers of America, Local Union No. 1993 v. Consolidation Coal Co., 84 I.D. 254 (1977)

Local Union No. 1993, United Mine Workers of America v. Cecil D. Andrus, No. 77-1582, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

U.S. v. Alonzo A. Adams et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams et al. v. Paul B. Witmer et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, Nov. 27, 1957 (opinion); rev'd & remanded, 271 F.2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F.2d 37 (9th Cir. 1959)

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, Jan. 29, 1962 (opinion); judgment modified, 318 F.2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Or. Judgment for defendant, July 5, 1978.

U.S. v. A. F. Anderson et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with Walter H. Burkhardt et al. v. Rogers C. B. Morton et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of Nov. 19, 1975; dismissed, Nov. 28, 1975.

U.S. v. Arizona Exploration Co. et al., A-28876 (June 22, 1962)

Blaine J. Lord et al. v. Roy T. Helmandollar et al., Civil No. 987-63. Judgment for defendants, Sept. 30, 1963; appeal dismissed, 348 F.2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individ. & as Secretary of the Interior & Stanley Gurnewald, Individ. & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, Apr. 25, 1977; appeal filed, June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an Individual & as Executrix of the Last Will of E. A. Barrows, Deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, Apr. 20, 1970; aff'd, 447 F.2d 80 (9th Cir. 1971).

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Or. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alaska. Judgment for defendant, June 19 1978; no appeal.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd & remanded with instructions to remand to the Secretary of the Interior, Mar. 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co. et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, Sept. 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D.N.M. Dismissed, Feb. 28, 1977; aff'd, Nov. 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alaska. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (Oct. 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, Aug. 19, 1964 (opinion); no appeal.

U.S. v. Jack Zemmy Boyd, Jr., 39 IBLA 321 (1979)

Jack Zemmy Boyd, Jr. v. Cecil D. Andrus, Secretary of the Interior, Civil No. A79-322, D. Alaska. Judgment for defendant, Mar. 14, 1980; dismissed & remanded, Aug. 17, 1981; vacated, Aug. 20, 1981.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969); reconsideration denied, Jan. 22, 1970

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd & remanded, 519 F.2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker et al., A-30636 (July 24, 1968); 9 IBLA 281, 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, Aug. 13, 1973; aff'd, 500 F.2d 200 (9th Cir. 1974); no petition.

U.S. v. Brubaker-Mann, Inc., R. W. Brubaker a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker & William J. Mann, a/k/a W. J. Mann, Civil No. 74-742-JWC, C.D. Cal. Stipulated agreement dated Jan. 30, 1975, & accepted by the defendants on Feb. 3, 1975; final judgment entered May 7, 1975.

U.S. v. Ernest L. & Evelyn B. Brunskill, 51 IBLA 199 (1980)

Ernest L. & Evelyn B. Brunskill v. The Secretary of the Interior, Civil No. CIV-S-81-140 MLS, E.D. Cal. Suit pending.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alaska. Remanded to the Agency for final consideration on the merits, Jan. 5, 1978.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102, 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Applegate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Dismissed with prejudice, Nov. 27, 1978.

U.S. v. Calhoun & Howell of Oregon, Ltd.; U.S. v. Lee Temple, A-31004 (Aug. 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Or. Judgment for defendant, Sept. 24, 1970; no appeal.

U.S. v. John C. Chapman et al., A-30581 (July 16, 1968)

John C. Chapman et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, Jan. 18, 1972; no appeal.

U.S. v. Charlestone Stone Products, Inc., 9 IBLA 94 (1973)

Charlestone Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, Nov. 7, 1974 (opinion); aff'd & remanded, 553 F.2d 1209 (9th Cir. 1977); rev'd & remanded, 436 U.S. 604 (1978), dismissed with prejudice, Jan. 25, 1982.

Suits for Judicial Review

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, Jan. 9, 1962; no appeal.

Nick Chournos et al. v. U.S. et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd, 335 F.2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, Apr. 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd, Oct. 9, 1974; rehearing denied, Jan. 13, 1975; cert. denied, Apr. 21, 1975.

U.S. v. J. R. Clements, A-27751 (Dec. 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, Jan. 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, Dec. 6, 1971; appeal withdrawn, Mar. 10, 1972.

U.S. v. Alfred Coleman, A-28557 (Mar. 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, Feb. 25, 1965 (opinion); remanded, 363 F.2d 190 (9th Cir. 1966); aff'd, 379 F.2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd, 405 F.2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-531, D. Or. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd, 399 F.2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Graham J. Corns, 53 IBLA 5 (1981)

Graham J. Corns v. Secretary of the Interior, Civil No. 81-293, E.D. Cal. Suit pending.

U.S. v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alaska. Judgment for defendant, June 23, 1978.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEC, D. Ariz. Judgment for defendant; aff'd, July 16, 1980.

U.S. v. Alvis F. Denison et al., 71 I.D. 144 (1964); 76 I.D. 233 (1969)

Marie W. Denison, Individ. & as Executrix of the Estate of Alvis F. Denison, Deceased v. Stewart L. Udall, Civil No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, Jan. 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, Jan. 31, 1972; aff'd, Feb. 1, 1974; cert. denied, Oct. 15, 1974.

U.S. v. J. S. Devenny, A-30289 (Aug. 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (Apr. 28, 1965); 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, Sept. 10, 1969; decision of BLM dated Jan. 16, 1970, aff'd by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas S. Kleppe, Secretary of the Interior, Curtis Berklund, Dir. of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, Feb. 9, 1977; no appeal.

U.S. v. Francis Dlouhy et al., A-27668 (Sept. 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, Nov. 28, 1960.

U.S. v. The Dredge Corp., A-28022 (Dec. 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; judgment for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Suits for Judicial Review

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers C. B. Morton et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, Feb. 12, 1974.

U.S. v. The Dredge Corp., 54 IBLA 281 (1981)

The Dredge Corp. v. James Watt et al., Civil No. CV-LV-81-504 HEC, D. Nev. Suit pending.

U.S. v. Dunbar Stone Co., 56 IBLA 61 (1981)

Dunbar Stone Co. v. Dept. of the Interior, James G. Watt, et al., Civil No. 1811271-331, D. Ariz. Suit pending.

U.S. v. Maurice Duvall et al., 1 IBLA 103 (1970)

Maurice Duval et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Or. Dismissed, 347 F. Supp. 501 (1972); aff'd, Dec. 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, Jan. 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (Jan. 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, Nov. 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974); Petition for review granted by Order of Oct. 30, 1975

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, Dec. 5, 1958 (opinion); aff'd, 271 F.2d 836 (1959); no petition.

U.S. v. Andrew L. Freese II, 37 IBLA 7 (1978)

Andrew L. Freese II v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV 78-1314, D. Idaho. Suit pending.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, Aug. 8, 1975.

U.S. v. Fred & Eileen Garner, 30 IBLA 42 (1977)

Fred & Eileen Garner v. U.S. et al., Civil No. 78-0314, D. Colo. Dismissed, Oct. 24, 1978, no appeal.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd, 405 F.2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (Sept. 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, Oct. 6, 1969; no appeal.

U.S. v. Golden Grigg et al., 19 IBLA 379, 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Judgment for defendant, Nov. 6, 1979; appeal filed, Jan. 3, 1980.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, Sept. 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Judgment for defendant, Sept. 2, 1976; aff'd, 590 F.2d 852 (10th Cir. 1979).

U.S. v. Urban Harenberg et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (Dec. 19, 1966); 3 IBLA 77 (1971); 59 IBLA 1, 88 I.D. 925 (1981)

Richard P. Haskins for Himself & as Admin. of The Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, Apr. 15, 1968; remanded to the Dir., Bureau of Land Management for an exercise of discretion, Oct. 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd & remanded for further proceedings, Oct. 25, 1974; no petition; 505 F.2d 246 (9th Cir. 1974).

Richard P. Haskins v. James Watt, Civil No. 82-2112 CBM (JRX), C.D. Cal. Suit pending.

U.S. v. Gerald D. Heden et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Or. Dismissed, Aug. 4, 1977; aff'd, Mar. 19, 1980.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd & remanded for further proceedings, 419 F.2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, Oct. 6, 1970.

U.S. v. Joseph R. & Aletha Henri, 46 IBLA 221 (1980)

Joseph R. & Aletha Henri v. Cecil D. Andrus, Secretary of the Interior, Interior Board of Land Appeals, Frederick Fishman, Douglas E. Henriques & Joan B. Thompson, Members of the IBLA, et al., Civil No. A80-124 Civ, D. Alaska. Suit pending.

U.S. v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al. v. Stewart L. Udall et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd, 350 F.2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks et al., A-30780 (Oct. 24, 1967)

Taylor T. Hicks et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ. 1202 Pct., D. Ariz. Judgment for defendant, Mar. 26, 1970.

U.S. v. Ernest Higbee et al., A-31063 (Apr. 1, 1970)

Ernest Higbee et al. v. Rogers C. B. Morton et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, Sept. 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, Dec. 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd, 549 F.2d 622 (9th Cir. 1977); petition for cert. filed, June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alaska. Judgment for defendant, Feb. 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd, 542 F.2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Or. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Leroy S. Johnson, et al., 39 IBLA 337 (1979)

Leroy S. Johnson, Joseph I. Barlow, Frederick Merril Jessop, Daniel Barlow, Edson P. Jessop, Fred M. Jessop, Dan C. Jessop & Samuel S. Barlow v. U.S., Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-0486, D. Utah. Suit pending.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974) See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (Oct. 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, Nov. 21, 1967; no appeal.

U.S. v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Robert N. Johnson et al. & Thelma A. Johnson as Individual & as Executrix of Nolan F. Fultz Estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (Dec. 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, Oct. 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, Jan. 7, 1977.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, Nov. 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton et al., Civil No. 2155, D. Mont. Dismissed with prejudice, Jan. 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall et al., Civil No. 1864, D. Nev. Judgment for defendant, Jan. 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (Mar. 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Or. Judgment for defendant, Feb. 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, Sept. 24, 1974; no appeal.

U.S. v. Lost Polack Mining Ass'n, 38 IBLA 101 (1978)

Lost Polack Mining & Exploration Co. v. Cecil Andrus, Secretary of the Interior, Civil No. 79-56 PHX CAM, D. Ariz. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, Oct. 1, 1975.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Ass'n (Intervenor), 2 IBLA 64, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 15, 1976; petition for reconsideration denied, Aug. 17, 1977; aff'd, July 10, 1980; rehearing en banc denied, Oct. 17, 1980; cert. denied, Mar. 23, 1981.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21, 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, Deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, Nov. 4, 1977; aff'd 628 F.2d 1185 (9th Cir. 1980); cert. denied, Mar. 23, 1981.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964); 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall et al., Civil No. 116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd & remanded, 408 F.2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, Aug. 13, 1969.

U.S. v. Edward T. McHenry et al., 43 IBLA 122 (1979)

Edward T. & Ruth E. McHenry v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Civil No. A79-394 CIV, D. Alaska. Suit pending.

U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, Apr. 3, 1973.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, Nov. 16, 1966; rev'd & remanded, 403 F.2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, Dec. 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969); 32 IBLA 46 (1977)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd in part & rev'd & remanded in part, 534 F.2d 860 (9th Cir. 1976); no petition.

Frank & Wanita Melluzzo v. Cecil Andrus, Secretary of the Interior, Civil No. CIV-79-282 PHX, CAM, D. Ariz. Judgment for defendant, May 20, 1980.

Suits for Judicial Review

U.S. v. Frank & Wanita Melluzzo et al., 76 I.D. 181 (1969); reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co. et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, Dec. 8, 1971; dismissed, Feb. 4, 1974.

U.S. v. Frank & Wanita Melluzzo, 38 IBLA 214, 85 I.D. 441 (1978)

Frank & Wanita Melluzzo v. U.S. & James Watt, Secretary of the Interior, Civil No. 81-607 PHX CAM, D. Ariz. Suit pending.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Or. Judgment for defendant, July 10, 1975; vacated & reremanded, May 3, 1977; modified amended judgment, Sept. 9, 1977.

U.S. v. G. Patrick Morris et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd in part, rev'd in part, Dec. 20, 1976; rev'd, 593 F.2d 851 (9th Cir. 1978). Dismissed with prejudice, June 23, 1980; motion to vacate denied Oct. 9, 1980; appeal filed Dec. 3, 1980.

U.S. v. Ernest Evon Moseley, A-30971 (Dec. 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (Jan. 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, Feb. 19, 1963 (opinion); aff'd, 326 F.2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, Mar. 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, Feb. 24, 1976.

U.S. v. Leonard F. Nelson, 8 IBLA 294 (1972); (Supp. I), 28 IBLA 314 (1977)

Leonard F. Nelson v. Rogers C. B. Morton et al., Civil No. A-3-73, D. Alaska. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd & remanded, Jan. 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, Nov. 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, Jan. 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995 D.N.M. Dismissed, Oct. 5, 1973; rev'd & remanded, 501 F.2d 1389 (10th Cir. 1974); remanded to the Dept. for further proceedings, Jan. 30, 1975; motion to compel compliance denied, July 24, 1978.

U.S. v. Lloyd O'Callaghan, Sr., et al., 79 I.D. 689 (1972); U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975); 29 IBLA 333 (1977)

Lloyd O'Callaghan, Sr., Individ. & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton et al., Civil No. 73-129-S, S.D. Cal. Aff'd in part & remanded, May 14, 1974. Judgment for defendant, May 16, 1978, aff'd, May 8, 1980.

U.S. v. Wilma L. Oldaker, A-30378 (Aug. 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alaska. Stipulated dismissal with prejudice, Mar. 3, 1967; no appeal.

U.S. v. J. R. Osborne et al., 77 I.D. 83 (1970), 28 IBLA 13 (1976); reconsideration denied by Order dated Jan. 4, 1977

J. R. Osborne, Individ. & on behalf of R. R. Borders et al. v. Rogers C. B. Morton et al., Civil No. 1564, D. Nev. Judgment for defendant, Mar. 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, Feb. 22, 1974; remanded to the Dept. with orders to re-examine the issues, Dec. 3, 1974.

Bradford Mining Corp., Successor of J. R. Osborne, agent for various persons v. Cecil D. Andrus, Secretary of the Interior, Civil No. LV-77-218, RDF, D. Nev. Suit pending.

U.S. v. Ralph Page et al., 19 IBLA 255 (1975); 43 IBLA 390 (1979)

Forest O. Garrigus, Jr., Forest O. Garrigus III, Ralph Page, Leona Aslett v. Cecil D. Andrus, Secretary of the Interior, Civil No. 80-314, D. Or. Suit pending.

Suits for Judicial Review

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388, 84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV77-5055, W.D.S.D. Suit pending.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, W.D.S.D. Dismissed, Dec. 26, 1978; aff'd, Feb. 12, 1980; cert. denied, Sept. 4, 1980.

U.S. v. Paul C. Poncia et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of Interior for consideration, Sept. 28, 1976.

U.S. v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

Hal W. Eldridge et al. v. Secretary of the Interior, Civil No. 64-353, D. Or. Judgment for defendant, Dec. 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin et al., A-27495 (Apr. 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered, July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, Jan. 15, 1960; rev'd & remanded, 284 F.2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, Mar. 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (Aug. 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F.2d 615 (1965); judgment for defendant, Jan. 4, 1966; per curiam dec., remanded for transfer to Dist. Ct., Or. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Or. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd, 410 F.2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam et al., 1 IBLA 143 (1970)

William D. Pulliam et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, Mar. 29, 1973; no appeal.

U.S. v. Chester L. Ramsey, 29 IBLA 243 (1977)

Chester Lee Ramsey v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. Marvin C. Ramsey et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Or. Dismissed, May 1, 1975; aff'd, Mar. 22, 1977.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, Feb. 11, 1975; aff'd, Oct. 15, 1976.

U.S. v. Cecil R. Reed, A-30354 (Sept. 29, 1965)

Cecil R. Reed v. Stewart L. Udall et al., Civil No. 1784, D. Nev. Judgment for defendant, Dec. 19, 1967; aff'd, 416 F.2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, Feb. 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036; A-31133 (Mar. 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, Oct. 22, 1971; appeal dismissed, Apr. 18, 1972.

U.S. v. R. E. & Barbara J. Rodgers, 32 IBLA 77 (1977)

R. E. & Barbara Rodgers v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-119, D. Or. Judgment for defendant, Mar. 26, 1980; amended judgment Oct. 2, 1980; appeal filed Nov. 12, 1980.

U.S. v. Alice W. Rouse, 56 IBLA 36 (1981)

Alice W. Rouse v. Dept. of the Interior & James Watt, Civil No. 81-1302-S(I), S.D. Cal. Suit pending.

U.S. v. Robert A. Rukke, Registered Agent, Valumines, Inc., et al., 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. U.S., Civil No. C77-206T, D. Wash. Suit pending.

Suits for Judicial Review

U.S. v. Dan S. Russell, 40 IBLA 309 (1979)

Dan S. Russell v. John R. McGuire, Individ. & as Chief, Forest Service, DOA, Bob Berglund, Individ. & as Secretary of Agriculture, Frank Gregg, Individ. & as Dir., BLM, Cecil D. Andrus, Individ. & as Secretary of the Interior, Civil No. 79-949, D. Or. Suit pending.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

Edwin R. Saurers et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley et al., A-28127 (Jan. 28, 1960)

Charles L. Seeley et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, Dec. 16, 1964.

U.S. v. James S. Sette, 46 IBLA 335 (1980)

James S. Sette v. The Secretary of the Interior, Civil No. S-80-593MLS, E.D. Cal. Suit pending.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)
See Idaho Desert Land Entries - Indian Hill Group

U.S. v. Silverton Mining & Milling Co., 1 IBLA 15 (Sept. 23, 1970)

Multiple Use, Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd, 504 F.2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (Feb. 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, Dec. 7, 1961; no appeal.

U.S. v. C. F. Snyder et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd, 405 F.2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co. et al. v. Rogers C. B. Morton et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, Nov. 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, Oct. 27, 1972.

U.S. v. Frank R. Sullivan, 9 IBLA 278 (1973)

Robert L. Mendenhall v. U.S., Cecil D. Andrus, Secretary of the Interior, & Edward F. Spange, State Dir. Nevada, BLM, Civil No. CV-R-80-146ECR, D. Nev. Suit pending.

U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974); 34 IBLA 25 (1978)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, Dec. 23, 1975 (opinion).

Elmer H. Swanson & Livingston Silver, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-78-4045, D. Idaho. Suit pending.

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U.S. v. United States Pumice Co., 37 IBLA 153 (1978); Supplemental Order of Intervention, June 1, 1979; Clarification of Order of June 1, 1979, dated July 18, 1979

The Wilderness Society, McKenzie Flyfishers, The Obsidians, et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-0296. Dismissed, May 30, 1979.

U.S. v. U.S. Silica Corp. et al., A-30400 (Aug. 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, Sept. 26, 1969; no appeal.

U.S. v. Utah International, Inc., 45 IBLA 73 (1980)

Utah International v. Cecil Andrus, Secretary of the Interior, Civil No. C80-068, D. Wyo. Judgment for defendant, Aug. 14, 1981.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S. et al., Civil No. 6898 Phx., D. Ariz. Rev'd & remanded, Dec. 29, 1970; aff'd, 457 F.2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (Apr. 24, 1966); A-30659 (Oct. 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Or. Judgment for defendant, Mar. 17, 1971; aff'd, 498 F.2d 288 (9th Cir. 1974); cert. denied, Nov. 18, 1974.

U.S. v. H. B. Webb, 1 IBLA 67 (1970)

U.S. v. Hiram Webb, Civil No. _____ D. Ariz. Judgment for plaintiff. Vacated & remanded, 655 F.2d 977 (9th Cir. 1981).

U.S. v. Oscar W. Weiss et al., A-30809 (Sept. 14, 1967); 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, Jan. 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (Jan. 8, 1968); A-30805 (Supp.) (Apr. 25, 1969); A-30805 (Supp. II) (Nov. 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, Dec. 12, 1968; remanded to Bureau of Land Management. Time extended to Nov. 1, 1970, to comply with requirements of Supp. II. Judgment for defendant, Dec. 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, Jan. 6, 1967; aff'd, 404 F.2d 334 (9th Cir. 1968); no petition.

U.S. v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 37 (1980)

Cesar S. Hernandez v. James Watt, Secretary of Interior, & Thom Coston, Regional Forester, Region I, DOA, Civil No. 81-35M, D. Mont. Suit pending.

U.S. v. Milton Wichner, 35 IBLA 240 (1978)

Milton Wichner v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Frank Gregg, Dir., BLM, Edward L. Hastey, State Dir. (California), BLM, William T. Dresser, Forest Supervisor of the Angeles National Forest, & U.S., Civil No. CV 78-2804, C.D. Cal. Suit pending.

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U.S. v. Rodney Wood et al., A-30697 (May 31, 1967)

Rodney Wood et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, Nov. 7, 1967; amended complaint filed; judgment for defendant, Mar. 27, 1969; no appeal.

U.S. v. Jon Zimmers & Claire Kelly, 44 IBLA 142 (1979)

Jon F. Zimmers v. Cecil D. Andrus, Secretary of the Interior, Civil No. S-80-140 LKK, E.D. Cal. Suit pending.

U.S. v. Elodymae Zwang; U.S. v. Darrell Zwang, 26 IBLA 41, 83 I.D. 280 (1976)

Darrell & Elodymae Zwang v. Cecil Andrus, Secretary of the Interior, Civil No. 77-1431 R, D. Cal. Judgment for plaintiff, Aug. 20, 1979.

U.S. v. Merle I. Zweifel et al., 16 IBLA 74 (1974)

Walter H. Burkhardt et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with A. F. Anderson et al. v. Rogers C. B. Morton et al., Civil No. C74-151, D. Wyo. for purposes of appeal by Order of Nov. 19, 1975. Dismissed, Nov. 28, 1975.

U.S. v. Merle I. Zweifel et al., 80 I.D. 323 (1973)

Merle I. Zweifel et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, Oct. 31, 1973.

Kenneth Roberts et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308, D. Colo. Dismissed with prejudice, 389 F. Supp. 87 (1975); aff'd, 549 F.2d 158 (10th Cir. 1977).

United Technical Industries, Inc., A-29406 (Apr. 24, 1963)

Jay Nielson v. J. E. Keough et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (Sept. 21, 1966)

Paul E. Unruh v. Udall et al., Civil No. 1894-N, D. Nev. Judgment for defendant June 14, 1967; no appeal.

Suits for Judicial Review

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. *Rogers C. B. Morton et al.*, Civil No. C-5-72, D. Utah. Dismissed with prejudice, Nov. 3, 1972; *aff'd*, Sept. 20, 1974.

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Utah Power & Light Co. v. *Thomas S. Kleppe, in his official capacity as Secretary of the Interior*, Civil No. C-76-136, D. Utah. Suit pending.

Utah Wilderness Ass'n et al., IBLA 81-648 (still pending)

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Henrietta Roberts Vaden, IBLA 74-1, dismissed by Order, Aug. 8, 1973, *Petition for reconsideration denied* by Order, May 29, 1975

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E. A. Vaugney, 63 I.D. 85 (1956)

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Robert J. Verchota, 64 IBLA 23 (1982)

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Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles & Caroline J. Charles (Brendale), 5 IBIA 96, 83 I.D. 209 (1976)

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Joseph, Janine, & April Adamick, Janice Hayes & Kathleen Jo Price v. *James G. Watt, Secretary of the Interior, et al.*, Civil No. CV-LV 81-586 RDF, D. Nev. Suit pending.

Burt A. Wackerli et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. *Stewart L. Udall et al.*, Civil No. 1-66-92, D. Idaho. Amended complaint filed, Mar. 17, 1971; judgment for plaintiff, Feb. 28, 1975.

Estate of Amelia Keyes Abbot Viramontes Walker, IA-1339 (Apr. 5, 1966)

Earlene Ida Abbott Simons v. *Udall et al.*, Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (Apr. 28, 1966)

Jack A. Walker v. *U.S. & Udall*, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; *rev'd*, 409 F.2d 477 (9th Cir. 1969); no petition.

Estate of Milward Wallace Ward, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth Collins v. *Kent Frizzell, Acting Secretary of the Interior, et al.*, Civil No. C75-175, D. Wyo. Dismissed, Jan. 1, 1976.

Wasatch Development Co. et al., A-28674 (May 16, 1963)

Joseph B. Umpleby et al. v. *Stewart L. Udall*, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. *U.S.*, Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, Oct. 26, 1959; satisfaction of judgment entered, Feb. 9, 1960.

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Estate of Mary Ursula Rock Wellknown, 1 IBIA 83, 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. *Rogers C. B. Morton et al.*, Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

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Cecil H. Phillips et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, Feb. 25, 1964; no appeal.

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Richard Wheeler, Jr., 34 IBLA 359 (1978)

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Estate of John P. Whitetail, IA-T-23 (Apr. 17, 1970)

Doris Ann Whitetail Parker et al. v. John Pappan et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, Aug. 17, 1973; no appeal.

Estate of Hiemstennie (Maggie) Whiz Abbott, 2 IBIA 53, 80 I.D. 617 (1973); 4 IBIA 12, 82 I.D. 169 (1975); reconsideration denied, 4 IBIA 79 (1975)

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Buck Willcoxson, A-27402; A-27403 (Dec. 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D.N.M. Motion of plaintiff to dismiss case without prejudice granted, Dec. 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson et al., Civil No. 1492-59.

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Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, Aug. 3, 1961; aff'd, 313 F.2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

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William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

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William F. Klingensmith, Inc., IBCA-717-5-68; IBCA-734-10-68 (May 4, 1971)

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W. L. Ridge Construction Co., IBCA-80 (Nov. 30, 1960)

W. L. Ridge v. U.S., Ct. Cl. No. 301-60. Suit dismissed, Oct. 1, 1963.

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Woods Petroleum Corp. et al., 55 IBLA 348 (1981)

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Mountain States Resources v. Rogers C. B. Morton, Individ. & as Secretary of the Interior, Civil No. C-75-238, D. Utah. Dismissed for failure to prosecute, Nov. 29, 1978. No appeal.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Admin. with Will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Dept. of the Interior & Earl R. Wiseman, District Dir. of Internal Revenue, Civil No. 8281, W.D. Okla. Dismissed as to the Examiner of Inheritance; plaintiff dismissed suit without prejudice as to the other defendants.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Admin. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F.2d 358 (1962).

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Zeigler Coal Co., 81 I.D. 729 (1974)

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1503(b) -------67 IBLA 193 (Sept. 22, 1982)

TITLE 11:

sec. 362(a)(1) ----66 IBLA 200 (Aug. 13, 1982)

TITLE 15:

sec. 631-647 ------66 IBLA 244 (Aug. 17, 1982)
644 ----------66 IBLA 244 (Aug. 17, 1982)
3313 ----------67 IBLA 1 (Sept. 1, 1982)

TITLE 16:

sec. 273 ----------66 IBLA 168 (Aug. 12, 1982)
350a ----------66 IBLA 316 (Aug. 25, 1982)
431 ----------68 IBLA 325 (Nov. 22, 1982)
431-433 ------65 IBLA 245 (July 9, 1982)
460 ----------69 IBLA 79 (Nov. 30, 1982)
4601-6a ------63 IBLA 373 (Apr. 30, 1982)
460I-6a(b) ---63 IBLA 373 (Apr. 30, 1982)

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TITLE 16: (Continued)

sec. 460l-6a(c) ---63 IBLA 373 (Apr. 30, 1982)
460l-6a(d) ---63 IBLA 373 (Apr. 30, 1982)
460l-6a(f) ---63 IBLA 373 (Apr. 30, 1982)
460n ---------69 IBLA 205 (Dec. 16, 1982)
460n-3 -------67 IBLA 189 (Sept. 22, 1982)
460aa --------65 IBLA 363 (July 20, 1982)
460aa-
460aa-14 ---65 IBLA 387 (July 23, 1982)
460aa-9 ------65 IBLA 387 (July 23, 1982)
460mm-2 ------61 IBLA 359 (Feb. 16, 1982)
460mm-4(b) ---61 IBLA 359 (Feb. 16, 1982)
460z ---------68 IBLA 1 (Oct. 12, 1982)
469 ----------67 IBLA 197 (Sept. 22, 1982)
485 ----------63 IBLA 192 (Apr. 8, 1982)
495 ----------68 IBLA 184 (Nov. 8, 1982)
497a ---------62 IBLA 187 (Mar. 9, 1982)
552a ---------62 IBLA 206 (Mar. 10, 1982)
661-664 ------67 IBLA 380 (Oct. 8, 1982)
668-668c -----68 IBLA 288 (Nov. 19, 1982)
670g ---------62 IBLA 73 (Feb. 25, 1982)
670h(a)(1) ---62 IBLA 73 (Feb. 25, 1982)
670h(c)(1)(A)-62 IBLA 73 (Feb. 25, 1982)
670h(c)(3)(D)-62 IBLA 73 (Feb. 25, 1982)
791a-823 -----64 IBLA 97 (May 17, 1982)
797 ----------67 IBLA 287 (Sept. 28, 1982)
798 ----------67 IBLA 287 (Sept. 28, 1982)
818 ----------61 IBLA 376 (Feb. 17, 1982)
64 IBLA 97 (May 17, 1982)
64 IBLA 159 (May 25, 1982)
64 IBLA 379 (June 15, 1982)
66 IBLA 390 (Aug. 31, 1982)
67 IBLA 317 (Oct. 1, 1982)
68 IBLA 184 (Nov. 8, 1982)
69 IBLA 148 (Dec. 13, 1982)
1131 ----------61 IBLA 99 (Jan. 4, 1982)
61 IBLA 124 (Jan. 15, 1982)
61 IBLA 139 (Jan. 18, 1982)
61 IBLA 300 (Feb. 3, 1982)
61 IBLA 370 (Feb. 17, 1982)
62 IBLA 45 (Feb. 24, 1982)
62 IBLA 263 (Mar. 15, 1982)
62 IBLA 319 (Mar. 22, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 321 (Apr. 27, 1982)
65 IBLA 84 (June 23, 1982)
65 IBLA 126 (June 25, 1982)
66 IBLA 282 (Aug. 19, 1982)
67 IBLA 124 (Sept. 16, 1982)
68 IBLA 219 (Nov. 12, 1982)
1131-1136 -----67 IBLA 197 (Sept. 22, 1982)
1131 et seq. --64 IBLA 27 (May 6, 1982)
1131(a) -------64 IBLA 27 (May 6, 1982)
1131(c) -------61 IBLA 99 (Jan 4, 1982)
61 IBLA 124 (Jan. 15, 1982)
61 IBLA 139 (Jan. 18, 1982)
61 IBLA 193 (Jan. 26, 1982)
61 IBLA 222 (Jan. 28, 1982)
61 IBLA 279 (Feb. 2, 1982)
61 IBLA 300 (Feb. 3, 1982)
61 IBLA 329 (Feb. 10, 1982)
61 IBLA 370 (Feb. 17, 1982)
61 IBLA 387 (Feb. 18, 1982)
62 IBLA 45 (Feb. 24, 1982)
62 IBLA 99 (Mar. 1, 1982)
62 IBLA 153 (Mar. 5, 1982)
62 IBLA 263 (Mar. 15, 1982)
62 IBLA 274 (Mar. 15, 1982)
62 IBLA 319 (Mar. 22, 1982)
62 IBLA 367 (Mar. 24, 1982)

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63 IBLA 30 (Mar. 26, 1982)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 172 (Apr. 8, 1982)
63 IBLA 208 (Apr. 12, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 7 (May 4, 1982)
64 IBLA 50 (May 6, 1982)
64 IBLA 307 (June 8, 1982)
65 IBLA 84 (June 23, 1982)
65 IBLA 126 (June 25, 1982)
65 IBLA 153 (June 29, 1982)
65 IBLA 223 (July 9, 1982)
65 IBLA 271 (July 12, 1982)
66 IBLA 14 (July 23, 1982)
66 IBLA 249 (Aug. 17, 1982)
66 IBLA 282 (Aug. 19, 1982)
66 IBLA 287 (Aug. 19, 1982)
66 IBLA 300 (Aug. 20, 1982)
66 IBLA 340 (Aug. 26, 1982)
67 IBLA 25 (Sept. 7, 1982)
67 IBLA 124 (Sept. 16, 1982)
67 IBLA 201 (Sept. 22, 1982)
67 IBLA 207 (Sept. 22, 1982)
67 IBLA 287 (Sept. 28, 1982)
68 IBLA 219 (Nov. 12, 1982)
68 IBLA 262 (Nov. 17, 1982)
1132 ----------63 IBLA 208 (Apr. 12, 1982)
64 IBLA 7 (May 4, 1982)
64 IBLA 50 (May 6, 1982)
65 IBLA 126 (June 25, 1982)
65 IBLA 223 (July 9, 1982)
66 IBLA 14 (July 23, 1982)
67 IBLA 25 (Sept. 7, 1982)
67 IBLA 201 (Sept. 22, 1982)
67 IBLA 207 (Sept. 22, 1982)
1132(a) -------61 IBLA 300 (Feb. 3, 1982)
1132(c) -------63 IBLA 321 (Apr. 27, 1982)
1133(d)(2) ----64 IBLA 27 (May 6, 1982)
1133(d)(3) ----64 IBLA 27 (May 6, 1982)
1271 ----------62 IBLA 16 (Feb. 23, 1982)
63 IBLA 91 (Mar. 31, 1982)
66 IBLA 390 (Aug. 31, 1982)
1271-1287 -----63 IBLA 373 (Apr. 30, 1982)
64 IBLA 44 (May 6, 1982)
1274 ----------63 IBLA 373 (Apr. 30, 1982)
1274(a)(23) ---63 IBLA 235 (Apr. 19, 1982)
1280 ----------66 IBLA 390 (Aug. 31, 1982)
1281(a) -------63 IBLA 373 (Apr. 30, 1982)
1331-1340 -----64 IBLA 76 (May 10, 1982)
66 IBLA 63 (July 29, 1982)
1333 ----------66 IBLA 63 (July 29, 1982)
1333(b)(2)(B) -64 IBLA 76 (May 10, 1982)
66 IBLA 63 (July 29, 1982)
1333(c) -------64 IBLA 76 (May 10, 1982)
66 IBLA 63 (July 29, 1982)
1531 ----------68 IBLA 288 (Nov. 19, 1982)
1536 ----------62 IBLA 73 (Feb. 25, 1982)
1536(b) -------62 IBLA 73 (Feb. 25, 1982)
1607 ----------62 IBLA 241 (Mar. 11, 1982)
1901 ----------67 IBLA 274 (Sept. 28, 1982)
1901-1912 -----63 IBLA 388 (Apr. 30, 1982)
64 IBLA 241 (May 28, 1982)
1903 ----------63 IBLA 35 (Mar. 30, 1982)
64 IBLA 241 (May 28, 1982)
66 IBLA 316 (Aug. 25, 1982)
1904 ----------63 IBLA 266 (Apr. 19, 1982)
1905 ----------63 IBLA 35 (Mar. 30, 1982)
64 IBLA 241 (May 28, 1982)
66 IBLA 316 (Aug. 25, 1982)

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TITLE 16: (Continued)

sec. 1907 ----------62 IBLA 124 (Mar. 4, 1982)
62 IBLA 249 (Mar. 15, 1982)
62 IBLA 252 (Mar. 15, 1982)
63 IBLA 235 (Apr. 19, 1982)
63 IBLA 266 (Apr. 19, 1982)
66 IBLA 168 (Aug. 12, 1982)
3101 ----------64 IBLA 357 (June 15, 1982)
66 IBLA 367 (Aug. 27, 1982)
68 IBLA 325 (Nov. 22, 1982)
3101-3233 ----- 7 ANCAB 132, 89 I.D. 303 (1982)
69 IBLA 1 (Nov. 24, 1982)
3143 ----------64 IBLA 357 (June 15, 1982)

TITLE 18:

sec. 1001 ----------63 IBLA 335 (Apr. 28, 1982)
1860 ----------62 IBLA 119 (Mar. 4, 1982)

TITLE 22:

sec. 212 ----------67 IBLA 193 (Sept. 22, 1982)

TITLE 23:

sec. 18 ----------61 IBLA 116 (Jan. 6, 1982)
62 IBLA 187 (Mar. 9, 1982)
107 ----------64 IBLA 346 (June 15, 1982)
108 ----------61 IBLA 116 (Jan. 6, 1982)
108(a) -------61 IBLA 116 (Jan. 6, 1982)
131 ----------64 IBLA 318 (June 10, 1982)
317 ----------61 IBLA 116 (Jan. 6, 1982)
62 IBLA 176 (Mar. 8, 1982)
62 IBLA 187 (Mar. 9, 1982)
64 IBLA 346 (June 15, 1982)
317(a) -------61 IBLA 116 (Jan. 6, 1982)
317(b) -------61 IBLA 116 (Jan. 6, 1982)
317(c) -------61 IBLA 116 (Jan. 6, 1982)

TITLE 25:

sec. 2 ---------- 9 IBIA 284, 89 I.D. 252 (1982)
13 ---------- 9 IBIA 294, 89 I.D. 257 (1982)
10 IBIA 78. 89 I.D. 424 (1982)
155 ----------10 IBIA 40, 89 I.D. 392 (1982)
331-349 ------11 IBIA 21, 89 I.D. 655 (1982)
331-354 ------10 IBIA 110, 89 I.D. 488 (1982)
332 ----------66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
334 ----------64 IBLA 361 (June 16, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 8 (Sept. 1, 1982)
67 IBLA 97 (Sept. 13, 1982)
67 IBLA 140 (Sept. 16, 1982)
67 IBLA 168 (Sept. 21, 1982)
67 IBLA 184 (Sept. 22, 1982)
68 IBLA 179 (Nov. 8, 1982)
336 ----------64 IBLA 361 (June 16, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
67 IBLA 168 (Sept. 21, 1982)
67 IBLA 184 (Sept. 22, 1982)
348 ---------- 9 IBIA 190 (Mar. 9, 1982)
10 IBIA 141 (Oct. 14, 1982)
11 IBIA 16 (Dec. 28, 1982)
11 IBIA 21, 89 I.D. 655 (1982)
354 ---------- 9 IBIA 151, 89 I.D. 49 (1982)
371 ---------- 9 IBIA 249, 89 I.D. 193 (1982)
372 ----------10 IBIA 141 (Oct. 14, 1982)
11 IBIA 16 (Dec. 28, 1982)
372-373 ------ 9 IBIA 190 (Mar. 9, 1982)

TITLE 25: (Continued)

sec. 372a --------- 9 IBIA 196 (Mar. 15, 1982)
373 ----------10 IBIA 17, 89 I.D. 361 (1982)
10 IBIA 128 (Oct. 5, 1982)
11 IBIA 16 (Dec. 28, 1982)
392 ----------11 IBIA 29, 89 I.D. 655 (1982)
396b ---------10 IBIA 72, 89 I.D. 412 (1982)
410 ---------- 9 IBIA 151, 89 I.D. 49 (1982)
415 ----------66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
450 ----------10 IBIA 72, 89 I.D. 412 (1982)
450-450n -----10 IBIA 146, 89 I.D. 508 (1982)
10 IBIA 173 (Oct. 15, 1982)
10 IBIA 189 (Oct. 15, 1982)
10 IBIA 205 (Oct. 15, 1982)
10 IBIA 221 (Oct. 15, 1982)
10 IBIA 237 (Oct. 15, 1982)
10 IBIA 253 (Oct. 15, 1982)
10 IBIA 269 (Oct. 15, 1982)
10 IBIA 285 (Oct. 15, 1982)
10 IBIA 301 (Oct. 15, 1982)
10 IBIA 318 (Oct. 15, 1982)
10 IBIA 334 (Oct. 15, 1982)
10 IBIA 350 (Oct. 15, 1982)
10 IBIA 366 (Oct. 15, 1982)
10 IBIA 382 (Oct. 15, 1982)
10 IBIA 399 (Oct. 15, 1982)
10 IBIA 416 (Oct. 15, 1982)
10 IBIA 432 (Oct. 15, 1982)
10 IBIA 448 (Oct. 15, 1982)
450-458e ----- 9 IBIA 203, 89 I.D. 132 (1982)
461-479 ------ 9 IBIA 284, 89 I.D. 252 (1982)
461-486 ------ 9 IBIA 203, 89 I.D. 132 (1982)
463 ----------10 IBIA 40, 89 I.D. 392 (1982)
63 IBLA 12 (Mar. 25, 1982)
463(a) -------10 IBIA 90, 89 I.D. 441 (1982)
464 ----------11 IBIA 16 (Dec. 28, 1982)
464-479 ------10 IBIA 72, 89 I.D. 412 (1982)
465 ----------10 IBIA 40, 89 I.D. 392 (1982)
467 ----------10 IBIA 40, 89 I.D. 392 (1982)
63 IBLA 12 (Mar. 25, 1982)
472 ---------- 9 IBIA 203, 89 I.D. 132 (1982)
476 ---------- 9 IBIA 186 (Mar. 3, 1982)
9 IBIA 203, 89 I.D. 132 (1982)
501 et seq. -- 4 OHA 244 (Mar. 8, 1982)
565a --------- 9 IBIA 147 (Jan 7, 1982)
9 IBIA 192 (Mar. 9, 1982)
565a(b) ------ 9 IBIA 147 (Jan. 7, 1982)
9 IBIA 277 (Apr. 22, 1982)
613 ---------- 9 IBIA 263, 89 I.D. 200 (1982)
761 et seq. -- M-36944, 89 I.D. 403 (1982)
1301-1341 ----- 9 IBIA 284, 89 I.D. 252 (1982)
10 IBIA 72, 89 I.D. 412 (1982)
1301 et seq. -- 9 IBIA 294, 89 I.D. 257 (1982)
1302(6) ------ 9 IBIA 294, 89 I.D. 257 (1982)
1901-1963 ----- 9 IBIA 254, 89 I.D. 196 (1982)
9 IBIA 281, 89 I.D. 241 (1982)
10 IBIA 23 (July 6, 1982)
1902 ---------- 9 IBIA 294, 89 I.D. 257 (1982)
1903(1) ------- 9 IBIA 294, 89 I.D. 257 (1982)
1903(4) ------- 9 IBIA 294, 89 I.D. 257 (1982)
1911(a) ------- 9 IBIA 294, 89 I.D. 257 (1982)
1912(b) ------- 9 IBIA 294, 89 I.D. 257 (1982)
1922 ---------- 9 IBIA 294, 89 I.D. 257 (1982)
1931-1934 ----- 9 IBIA 281, 89 I.D. 241 (1982)
10 IBIA 78, 89 I.D. 424 (1982)
11 IBIA 9 (Dec. 10, 1982)
1931(a)(8) ---- 9 IBIA 294, 89 I.D. 257 (1982)

TITLE 26:

sec. 3401 -------- IBCA-1550-2-82, 89 I.D. 365 (1982)

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TITLE 28:

sec. 2516(a) ------- IBCA-1506-8-81, 89 I.D. 233 (1982)

TITLE 30:

sec. 21 ----------69 IBLA 194 (Dec. 15, 1982)
21a ----------63 IBLA 19 (Mar. 26, 1982)
22 ----------61 IBLA 251 (Jan. 29, 1982)
62 IBLA 243 (Mar. 15, 1982)
63 IBLA 388 (Apr. 30, 1982)
65 IBLA 357 (July 20, 1982)
65 IBLA 387 (July 23, 1982)
66 IBLA 316 (Aug. 25, 1982)
66 IBLA 357 (Aug. 27, 1982)
67 IBLA 48 (Sept. 9, 1982)
68 IBLA 1 (Oct. 12, 1982)
68 IBLA 11 (Oct. 18, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
69 IBLA 19 (Nov. 24, 1982)
22 *et seq.* -- 7 ANCAB 106, 89 I.D. 293 (1982)
68 IBLA 367 (Nov. 22, 1982)
22-24 -------61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
22-47 -------67 IBLA 162 (Sept. 21, 1982)
23 ----------61 IBLA 113 (Jan. 6, 1982)
61 IBLA 251 (Jan. 29, 1982)
63 IBLA 388 (Apr. 30, 1982)
64 IBLA 241 (May 28, 1982)
65 IBLA 164 (June 29, 1982)
65 IBLA 239 (July 9, 1982)
66 IBLA 357 (Aug. 27, 1982)
26-28 -------61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
28 ----------61 IBLA 109 (Jan. 4, 1982)
61 IBLA 347 (Feb. 11, 1982)
63 IBLA 60 (Mar. 30, 1982)
63 IBLA 70 (Mar. 30, 1982)
63 IBLA 129 (Apr. 5, 1982)
63 IBLA 266 (Apr. 19, 1982)
65 IBLA 314 (July 14, 1982)
65 IBLA 369 (July 20, 1982)
66 IBLA 46 (July 27, 1982)
66 IBLA 147 (Aug. 10, 1982)
66 IBLA 204 (Aug. 13, 1982)
67 IBLA 48 (Sept. 9, 1982)
67 IBLA 64 (Sept. 9, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
69 IBLA 137 (Dec. 9, 1982)
28-1 --------62 IBLA 224 (Mar. 10, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 378 (Mar. 24, 1982)
64 IBLA 114 (May 19, 1982)
64 IBLA 141 (May 24, 1982)
65 IBLA 72 (June 23, 1982)
65 IBLA 175 (June 29, 1982)
65 IBLA 369 (July 20, 1982)
67 IBLA 130 (Sept. 16, 1982)
67 IBLA 220 (Sept. 23, 1982)
67 IBLA 388 (Oct. 8, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 301 (Nov. 19, 1982)
69 IBLA 124 (Dec. 8, 1982)
28b ---------62 IBLA 232 (Mar. 11, 1982)
29 ----------61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
66 IBLA 71 (July 29, 1982)
68 IBLA 301 (Nov. 19, 1982)
68 IBLA 325 (Nov. 22, 1982)
30 ----------61 IBLA 109 (Jan. 4, 1982)

TITLE 30: (Continued)

63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
68 IBLA 325 (Nov. 22, 1982)
69 IBLA 194 (Dec. 15, 1982)
33-35 -------61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
35 ----------62 IBLA 35 (Feb. 24, 1982)
63 IBLA 388 (Apr. 30, 1982)
65 IBLA 167 (June 29, 1982)
36 ----------62 IBLA 35 (Feb. 24, 1982)
65 IBLA 22 (June 21, 1982)
68 IBLA 367 (Nov. 22, 1982)
37 ----------61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
38 ----------62 IBLA 146 (Mar. 5, 1982)
64 IBLA 132 (May 20, 1982)
66 IBLA 310 (Aug. 24, 1982)
69 IBLA 194 (Dec. 15, 1982)
39-42 -------61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
42 ---------- 7 ANCAB 106, 89 I.D. 293 (1982)
42(b) ------- 7 ANCAB 106, 89 I.D. 293 (1982)
53 ----------69 IBLA 194 (Dec. 15, 1982)
81 ----------66 IBLA 100 (Aug. 4, 1982)
81-85 -------69 IBLA 194 (Dec. 15, 1982)
83-85 -------66 IBLA 100 (Aug. 4, 1982)
121-123 ------66 IBLA 100 (Aug. 4, 1982)
121-124 ------69 IBLA 194 (Dec. 15, 1982)
123 ----------66 IBLA 100 (Aug. 4, 1982)
161 ----------66 IBLA 182 (Aug. 13, 1982)
181 ----------61 IBLA 202 (Jan. 26, 1982)
62 IBLA 93, 89 I.D. 82 (1982)
62 IBLA 184 (Mar. 9, 1982)
62 IBLA 206 (Mar. 10, 1982)
62 IBLA 384 (Mar. 24, 1982)
63 IBLA 284 (Apr. 22, 1982)
63 IBLA 313 (Apr. 27, 1982)
66 IBLA 1, 89 I.D. 386 (1982)
66 IBLA 313 (Aug. 24, 1982)
68 IBLA 128 (Oct. 28, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
68 IBLA 142, 89 I.D. 561 (1982)
68 IBLA 167 (Oct. 29, 1982)
69 IBLA 279 (Dec. 21, 1982)
181-263 ------68 IBLA 237 (Nov. 16, 1982)
181-287 ------64 IBLA 336 (June 10, 1982)
66 IBLA 134 (Aug. 10, 1982)
66 IBLA 174 (Aug. 12, 1982)
181 *et seq.* --63 IBLA 119 (Apr. 2, 1982)
65 IBLA 22 (June 21, 1982)
184 ----------62 IBLA 336 (Mar. 24, 1982)
184(a) -------62 IBLA 220 (Mar. 10, 1982)
M-36945, 89 I.D. 610 (1982)
184(d) -------62 IBLA 336 (Mar. 24, 1982)
184(e) -------62 IBLA 336 (Mar. 24, 1982)
184(h) -------61 IBLA 235 (Jan. 28, 1982)
62 IBLA 278 (Mar. 16, 1982)
64 IBLA 247 (May 28, 1982)
184(h)(1) ----62 IBLA 119 (Mar. 4, 1982)
184(h)(2) ----61 IBLA 235 (Jan. 28, 1982)
62 IBLA 1 (Feb. 22, 1982)
62 IBLA 119 (Mar. 4, 1982)
62 IBLA 278 (Mar. 16, 1982)
64 IBLA 247 (May 28, 1982)
64 IBLA 279 (June 4, 1982)
65 IBLA 12 (June 21, 1982)
65 IBLA 76 (June 23, 1982)

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TITLE 30: (Continued)

65 IBLA 104 (June 24, 1982)
65 IBLA 147 (June 29, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
68 IBLA 90 (Oct. 22, 1982)
69 IBLA 13 (Nov. 24, 1982)
184(i) --------62 IBLA 1 (Feb. 22, 1982)
184(j) --------64 IBLA 247 (May 28, 1982)
185 -----------65 IBLA 245 (July 9, 1982)
185(1) --------65 IBLA 245 (July 9, 1982)
187 -----------62 IBLA 119 (Mar. 4, 1982)
65 IBLA 147 (June 29, 1982)
68 IBLA 96 (Oct. 26, 1982)
M-36943, 89 I.D. 173 (1982)
187a ----------62 IBLA 38 (Feb. 24, 1982)
62 IBLA 180 (Mar. 8, 1982)
65 IBLA 104 (June 24, 1982)
65 IBLA 373 (July 20, 1982)
66 IBLA 20 (July 23, 1982)
67 IBLA 357 (Oct. 6, 1982)
187b ----------62 IBLA 119 (Mar. 4, 1982)
65 IBLA 104 (June 24, 1982)
188 -----------62 IBLA 391 (Mar. 24, 1982)
63 IBLA 296 (Apr. 23, 1982)
64 IBLA 146 (May 24, 1982)
64 IBLA 383 (June 17, 1982)
65 IBLA 99 (June 24, 1982)
66 IBLA 338 (Aug. 26, 1982)
67 IBLA 17 (Sept. 3, 1982)
188(a) ------- M-36943, 89 I.D. 173 (1982)
188(b) --------61 IBLA 226, 89 I.D. 26 (1982)
61 IBLA 287 (Feb. 2, 1982)
62 IBLA 13 (Feb. 23, 1982)
62 IBLA 87 (Feb. 25, 1982)
62 IBLA 180 (Mar. 8, 1982)
62 IBLA 278 (Mar. 16, 1982)
63 IBLA 26 (Mar. 26, 1982)
63 IBLA 296 (Apr. 23, 1982)
64 IBLA 121 (May 19, 1982)
64 IBLA 123 (May 19, 1982)
64 IBLA 274 (June 2, 1982)
64 IBLA 277 (June 3, 1982)
64 IBLA 383 (June 17, 1982)
65 IBLA 99 (June 24, 1982)
65 IBLA 204 (June 29, 1982)
65 IBLA 373 (July 20, 1982)
66 IBLA 304 (Aug. 24, 1982)
67 IBLA 43 (Sept. 8, 1982)
67 IBLA 59 (Sept. 9, 1982)
67 IBLA 242 (Sept. 24, 1982)
67 IBLA 357 (Oct. 6, 1982)
68 IBLA 21 (Oct. 19, 1982)
68 IBLA 80 (Oct. 21, 1982)
68 IBLA 92 (Oct. 22, 1982)
68 IBLA 170 (Nov. 4, 1982)
69 IBLA 62 (Nov. 29, 1982)
69 IBLA 263 (Dec. 21, 1982)
69 IBLA 327 (Dec. 28, 1982)
188(c) --------61 IBLA 226, 89 I.D. 26 (1982)
61 IBLA 287 (Feb. 2, 1982)
62 IBLA 13 (Feb. 23, 1982)
62 IBLA 87 (Feb. 25, 1982)
63 IBLA 26 (Mar. 26, 1982)
63 IBLA 287 (Apr. 22, 1982)
63 IBLA 296 (Apr. 23, 1982)
64 IBLA 119 (May 19, 1982)
64 IBLA 121 (May 19, 1982)
64 IBLA 123 (May 19, 1982)
64 IBLA 274 (June 2, 1982)
64 IBLA 277 (June 3, 1982)
64 IBLA 354 (June 15, 1982)

TITLE 30: (Continued)

64 IBLA 383 (June 17, 1982)
65 IBLA 204 (June 29, 1982)
65 IBLA 373 (July 20, 1982)
66 IBLA 304 (Aug. 24, 1982)
67 IBLA 43 (Sept. 8, 1982)
67 IBLA 59 (Sept. 9, 1982)
67 IBLA 242 (Sept. 24, 1982)
67 IBLA 357 (Oct. 6, 1982)
68 IBLA 21 (Oct. 19, 1982)
68 IBLA 92 (Oct. 22, 1982)
68 IBLA 170 (Nov. 4, 1982)
69 IBLA 62 (Nov. 29, 1982)
69 IBLA 263 (Dec. 21, 1982)
69 IBLA 327 (Dec. 28, 1982)
188(d) --------63 IBLA 296 (Apr. 23, 1982)
189 -----------65 IBLA 99 (June 24, 1982)
66 IBLA 174 (Aug. 12, 1982)
M-36943, 89 I.D. 173 (1982)
193 -----------68 IBLA 37, 89 I.D. 538 (1982)
201 ----------- M-36945, 89 I.D. 610 (1982)
201(a)(3)(A) -68 IBLA 96 (Oct. 26, 1982)
201(a)(3)(C) -68 IBLA 96 (Oct. 26, 1982)
201(a)(3)(E) -68 IBLA 96 (Oct. 26, 1982)
201(b) --------65 IBLA 359 (July 20, 1982)
68 IBLA 96 (Oct. 26, 1982)
M-36943, 89 I.D. 173 (1982)
201(b)(1) ----69 IBLA 1 (Nov. 24, 1982)
201(b)(3) ----69 IBLA 1 (Nov. 24, 1982)
202 ----------- M-36945, 89 I.D. 610 (1982)
202(c) ------- M-36945, 89 I.D 610 (1982)
207 -----------63 IBLA 363 (Apr. 29, 1982)
65 IBLA 147 (June 29, 1982)
65 IBLA 323 (July 15, 1982)
68 IBLA 96 (Oct. 26, 1982)
69 IBLA 114 (Nov. 30, 1982)
207(a) --------65 IBLA 147 (June 29, 1982)
68 IBLA 96 (Oct. 26, 1982)
M-36943, 89 I.D. 173 (1982)
207(b) --------68 IBLA 96 (Oct. 26, 1982)
207(c) --------68 IBLA 96 (Oct. 26, 1982)
208-2 --------- M-36945, 89 I.D. 610 (1982)
209 -----------67 IBLA 260 (Sept. 27, 1982)
68 IBLA 96 (Oct. 26, 1982)
69 IBLA 39 (Nov. 29, 1982)
M-36943, 89 I.D. 173 (1982)
211 -----------68 IBLA 96 (Oct. 26, 1982)
211(a) --------67 IBLA 297 (Sept. 29, 1982)
211(b) --------67 IBLA 297 (Sept. 29, 1982)
M-36943, 89 I.D. 173 (1982)
221-223 ------ M-36943, 89 I.D. 173 (1982)
223 ----------- M-36943, 89 I.D. 173 (1982)
226 -----------61 IBLA 178 (Jan. 26, 1982)
61 IBLA 226, 89 I.D. 26 (1982)
63 IBLA 300 (Apr. 26, 1982)
63 IBLA 369 (Apr. 30, 1982)
64 IBLA 83 (May 10, 1982)
64 IBLA 175 (May 26, 1982)
64 IBLA 234 (May 27, 1982)
64 IBLA 357 (June 15, 1982)
65 IBLA 104 (June 24, 1982)
65 IBLA 268 (July 9, 1982)
66 IBLA 372 (Aug. 27, 1982)
67 IBLA 67 (Sept. 10, 1982)
67 IBLA 103 (Sept. 15, 1982)
67 IBLA 112 (Sept. 15, 1982)
67 IBLA 193 (Sept. 22, 1982)
68 IBLA 16 (Oct. 19, 1982)
68 IBLA 87 (Oct. 22, 1982)
68 IBLA 90 (Oct. 22, 1982)
68 IBLA 240 (Nov. 16, 1982)

TITLE 30: (Continued)

69 IBLA 39 (Nov. 29, 1982)
69 IBLA 135 (Dec. 8, 1982)
69 IBLA 255 (Dec. 21, 1982)
69 IBLA 313 (Dec. 27, 1982)
226(a) -------62 IBLA 93, 89 I.D. 82 (1982)
62 IBLA 206 (Mar. 10, 1982)
65 IBLA 210 (June 30, 1982)
65 IBLA 271 (July 12, 1982)
66 IBLA 23 (July 23, 1982)
66 IBLA 141 (Aug. 10, 1982)
67 IBLA 38 (Sept. 8, 1982)
68 IBLA 128 (Oct. 28, 1982)
68 IBLA 167 (Oct. 29, 1982)
226(b) -------62 IBLA 93, 89 I.D. 82 (1982)
63 IBLA 111 (Apr. 2, 1982)
63 IBLA 369 (Apr. 30, 1982)
66 IBLA 23 (July 23, 1982)
66 IBLA 84 (July 29, 1982)
66 IBLA 141 (Aug. 10, 1982)
67 IBLA 1 (Sept. 1, 1982)
67 IBLA 38 (Sept. 8, 1982)
67 IBLA 103 (Sept. 15, 1982)
67 IBLA 348 (Oct. 5, 1982)
67 IBLA 351 (Oct. 5, 1982)
68 IBLA 231 (Nov. 16, 1982)
69 IBLA 259 (Dec. 21, 1982)
226(c) -------61 IBLA 199 (Jan. 26, 1982)
61 IBLA 213 (Jan. 28, 1982)
61 IBLA 270 (Jan. 29, 1982)
62 IBLA 93, 89 I.D. 82 (1982)
62 IBLA 220 (Mar. 10, 1982)
62 IBLA 228 (Mar. 10, 1982)
62 IBLA 296 (Mar. 16, 1982)
62 IBLA 336 (Mar. 24, 1982)
62 IBLA 384 (Mar. 24, 1982)
63 IBLA 192 (Apr. 8, 1982)
63 IBLA 300 (Apr. 26, 1982)
63 IBLA 313 (Apr. 27, 1982)
64 IBLA 92 (May 12, 1982)
65 IBLA 38 (June 22, 1982)
65 IBLA 340 (July 16, 1982)
66 IBLA 23 (July 23, 1982)
66 IBLA 49 (July 27, 1982)
66 IBLA 219 (Aug. 16, 1982)
66 IBLA 260 (Aug. 17, 1982)
66 IBLA 276 (Aug. 18, 1982)
66 IBLA 313 (Aug. 24, 1982)
67 IBLA 36 (Sept. 8, 1982)
67 IBLA 364 (Oct. 7, 1982)
68 IBLA 215 (Nov. 10, 1982)
68 IBLA 243 (Nov. 16, 1982)
68 IBLA 308 (Nov. 19, 1982)
68 IBLA 311 (Nov. 19, 1982)
68 IBLA 313 (Nov. 19, 1982)
68 IBLA 364 (Nov. 22, 1982)
68 IBLA 381 (Nov. 23, 1982)
69 IBLA 54 (Nov. 29, 1982)
69 IBLA 154 (Dec. 13, 1982)
69 IBLA 169 (Dec. 13, 1982)
69 IBLA 175 (Dec. 14, 1982)
69 IBLA 199 (Dec. 15, 1982)
69 IBLA 285 (Dec. 21, 1982)
69 IBLA 296 (Dec. 23, 1982)
226(d) -------63 IBLA 296 (Apr. 23, 1982)
226(e) -------62 IBLA 93, 89 I.D. 82 (1982)
63 IBLA 296 (Apr. 23, 1982)
63 IBLA 339 (Apr. 28, 1982)
64 IBLA 153 (May 24, 1982)
67 IBLA 246, 89 I.D. 480 (1982)
68 IBLA 191 (Nov. 9, 1982)

TITLE 30: (Continued)

69 IBLA 39 (Nov. 29, 1982)
M-36943, 89 I.D. 173 (1982)
226(f) -------66 IBLA 200 (Aug. 13, 1982)
69 IBLA 39 (Nov. 29, 1982)
226(j) -------64 IBLA 153 (May 24, 1982)
66 IBLA 200 (Aug. 13, 1982)
67 IBLA 80 (Sept. 10, 1982)
67 IBLA 246, 89 I.D. 480 (1982)
68 IBLA 80 (Oct. 21, 1982)
68 IBLA 191 (Nov. 9, 1982)
226-1 --------63 IBLA 296 (Apr. 23, 1982)
241 ----------63 IBLA 369 (Apr. 30, 1982)
241(c) -------66 IBLA 23 (July 23, 1982)
261-262 ------64 IBLA 183, 89 I.D. 262 (1982)
262 ---------- M-36943, 89 I.D. 173 (1982)
266 ----------64 IBLA 285 (June 4, 1982)
266-2 --------64 IBLA 279 (June 4, 1982)
271 ---------- M-36943, 89 I.D. 173 (1982)
281-287 ------69 IBLA 317 (Dec. 27, 1982)
282 ---------- M-36943, 89 I.D. 173 (1982)
283 ----------69 IBLA 114 (Nov. 30, 1982)
69 IBLA 317 (Dec. 27, 1982)
M-36943, 89 I.D. 173 (1982)
301 ----------62 IBLA 384 (Mar. 24, 1982)
68 IBLA 142, 89 I.D. 561 (1982)
301-306 ------62 IBLA 384 (Mar. 24, 1982)
65 IBLA 22 (June 21, 1982)
68 IBLA 142, 89 I.D. 561 (1982)
303 ----------68 IBLA 142, 89 I.D. 561 (1982)
351 ----------67 IBLA 112 (Sept. 15, 1982)
68 IBLA 92 (Oct. 22, 1982)
69 IBLA 279 (Dec. 21, 1982)
351-359 ------61 IBLA 175 (Jan. 26, 1982)
64 IBLA 4 (May 3, 1982)
64 IBLA 170 (May 26, 1982)
66 IBLA 307 (Aug. 24, 1982)
68 IBLA 130 (Oct. 28, 1982)
68 IBLA 181 (Nov. 8, 1982)
351 *et seq.* --63 IBLA 119 (Apr. 2, 1982)
352 ----------64 IBLA 4 (May 3, 1982)
66 IBLA 307 (Aug. 24, 1982)
68 IBLA 132 (Oct. 28, 1982)
68 IBLA 237 (Nov. 16, 1982)
69 IBLA 279 (Dec. 21, 1982)
354 ----------62 IBLA 162 (Mar. 8, 1982)
68 IBLA 132 (Oct. 28, 1982)
359 ----------61 IBLA 175 (Jan. 26, 1982)
68 IBLA 130 (Oct. 28, 1982)
404 ----------65 IBLA 391 (July 23, 1982)
501(a) -------69 IBLA 137 (Dec. 9, 1982)
521(a) -------69 IBLA 137 (Dec. 9, 1982)
601 ----------62 IBLA 187 (Mar. 9, 1982)
64 IBLA 183, 89 I.D. 262 (1982)
66 IBLA 182 (Aug. 13, 1982)
68 IBLA 359 (Nov. 22, 1982)
601 *et seq.* --64 IBLA 183, 89 I.D. 262 (1982)
602 ----------64 IBLA 183, 89 I.D. 262 (1982)
611 ----------64 IBLA 183, 89 I.D. 262 (1982)
66 IBLA 182 (Aug. 13, 1982)
66 IBLA 316 (Aug. 25, 1982)
612 ----------64 IBLA 27 (May 6, 1982)
613 ----------67 IBLA 64 (Sept. 9, 1982)
621 ----------61 IBLA 376 (Feb. 17, 1982)
66 IBLA 310 (Aug. 24, 1982)
66 IBLA 390 (Aug. 31, 1982)
69 IBLA 145 (Dec. 9, 1982)
69 IBLA 148 (Dec. 13, 1982)
621-625 ------64 IBLA 23 (May 6, 1982)
66 IBLA 310 (Aug. 24, 1982)
69 IBLA 290 (Dec. 23, 1982)

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TITLE 30: (Continued)

sec. 621(a) --------61 IBLA 376 (Feb. 17, 1982)
621(b) --------61 IBLA 376 (Feb. 17, 1982)
69 IBLA 290 (Dec. 23, 1982)
623 -----------64 IBLA 23 (May 6, 1982)
66 IBLA 310 (Aug. 24, 1982)
69 IBLA 290 (Dec. 23, 1982)
701 -----------63 IBLA 279 (Apr. 20, 1982)
63 IBLA 306 (Apr. 26, 1982)
701-709 -------63 IBLA 279 (Apr. 20, 1982)
702 -----------63 IBLA 279 (Apr. 20, 1982)
63 IBLA 306 (Apr. 26, 1982)
703 -----------63 IBLA 306 (Apr. 26, 1982)
1001-1025 ------67 IBLA 304, 89 I.D. 496 (1982)
1002 -----------63 IBLA 263 (Apr. 19, 1982)
1002-1003 ------63 IBLA 159 (Apr. 6, 1982)
66 IBLA 57 (July 29, 1982)
1003 -----------67 IBLA 304, 89 I.D. 496 (1982)
1003(a) --------67 IBLA 304, 89 I.D. 496 (1982)
1003(f) --------67 IBLA 304, 89 I.D. 496 (1982)
1004(c) --------61 IBLA 265 (Jan. 29, 1982)
1014(b) --------67 IBLA 187 (Sept. 22, 1982)
1020(b) --------67 IBLA 304, 89 I.D. 496 (1982)
1201-1328 ----- 4 IBSMA 19, 89 I.D. 87 (1982)
4 IBSMA 24, 89 I.D. 460 (1982)
4 IBSMA 29 (Mar. 15, 1982)
4 IBSMA 51, 89 I.D. 313 (1982)
4 IBSMA 101, 89 I.D. 378 (1982)
4 IBSMA 140, 89 I.D. 467 (1982)
4 IBSMA 156, 89 I.D. 475 (1982)
4 IBSMA 179, 89 I.D. 594 (1982)
4 IBSMA 185, 89 I.D. 604 (1982)
4 IBSMA 211, 89 I.D. 624 (1982)
4 IBSMA 219, 89 I.D. 628 (1982)
4 IBSMA 227, 89 I.D. 632 (1982)
1202 ----------- 4 IBSMA 4 (Feb. 24, 1982)
1260 ----------- 4 IBSMA 69, 89 I.D. 331 (1982)
1261(a)(3) ---- 4 IBSMA 19, 89 I.D. 87 (1982)
1263(b) -------- 4 IBSMA 4 (Feb. 24, 1982)
1263-1264 ----- 4 IBSMA 4 (Feb. 24, 1982)
4 IBSMA 69, 89 I.D. 331 (1982)
1264(c) -------- 4 IBSMA 4 (Feb. 24, 1982)
1265(b)(10) --- 4 IBSMA 101, 89 I.D. 378 (1982)
4 IBSMA 227, 89 I.D. 632 (1982)
1267(h) -------- 4 IBSMA 69, 89 I.D. 331 (1982)
1270 ----------- 4 IBSMA 69, 89 I.D. 331 (1982)
1270(a) -------- 4 IBSMA 4 (Feb. 24, 1982)
1271 ----------- 4 IBSMA 113, 89 I.D. 409 (1982)
1271(a)(3) ---- 4 IBSMA 51, 89 I.D. 313 (1982)
1271(a)(4) ---- 4 IBSMA 69, 89 I.D. 331 (1982)
1271(a)(5) ---- 4 IBSMA 207 (Dec. 17, 1982)
1272(c) -------- 4 IBSMA 192 (Dec. 10, 1982)
1272(e)(5) ---- 4 IBSMA 35, 89 I.D. 113 (1982)
1273(a) --------68 IBLA 96 (Oct. 26, 1982)
1273(c) --------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
1275 ----------- 4 IBSMA 185, 89 I.D. 604 (1982)
1275(a) -------- 4 IBSMA 4 (Feb. 24, 1982)
1275(a)(2) ---- 4 IBSMA 179, 89 I.D. 594 (1982)
1275(c) -------- 4 IBSMA 35, 89 I.D. 113 (1982)
1276 ----------- 4 IBSMA 4 (Feb. 24, 1982)
1278 ----------- 4 IBSMA 24, 89 I.D. 460 (1982)
1278(2) -------- 4 IBSMA 24, 89 I.D. 460 (1982)
4 IBSMA 219, 89 I.D. 628 (1982)
1291(4) --------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
1291(5) -------- 4 IBSMA 4 (Feb. 24, 1982)
1291(6) -------- 4 IBSMA 4 (Feb. 24, 1982)
1291(13) ------- 4 IBSMA 211, 89 I.D. 624 (1982)
1291(15) ------- 4 IBSMA 211, 89 I.D. 624 (1982)
1291(17) ------- 4 IBSMA 211, 89 I.D. 624 (1982)

TITLE 30: (Continued)

sec. 1291(18) ------ 4 IBSMA 211, 89 I.D. 624 (1982)
1291(19) ------ 4 IBSMA 211, 89 I.D. 624 (1982)
1291(25) ------ 4 IBSMA 4 (Feb. 24, 1982)
1291(27) ------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
1291(28) ------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
4 IBSMA 24, 89 I.D. 460 (1982)
1291(28)(B) --- 4 IBSMA 29 (Mar. 15, 1982)
4 IBSMA 51, 89 I.D. 313 (1982)
4 IBSMA 219, 89 I.D. 628 (1982)

TITLE 31:

sec. 701 ----------- 9 IBIA 254, 89 I.D. 196 (1982)
951-953 ------ 9 IBIA 151, 89 I.D. 49 (1982)

TITLE 33:

sec. 1251 -----------62 IBLA 299 (Mar. 18, 1982)
68 IBLA 96 (Oct. 26, 1982)
1251(a) --------62 IBLA 299 (Mar. 18, 1982)

TITLE 40:

sec. 276a-276a-7 -- IBCA-1550-2-82, 89 I.D. 365 (1982)
327 et seq. -- IBCA-1466-6-81 (Sept. 21, 1982)
IBCA-1536-11-81 (Sept. 22, 1982)
471-544 -------10 IBIA 90, 89 I.D. 441 (1982)
483(a)(2) ----10 IBIA 90, 89 I.D. 441 (1982)

TITLE 41:

sec. 601-613 ------ IBCA-1229-8-79 (Feb. 12, 1982)
IBCA-1350-4-80 (Apr. 14, 1982)
IBCA-1474-6-81, 89 I.D. 92 (1982)
IBCA-1506-8-81, 89 I.D. 233 (1982)
IBCA-1550-2-82, 89 I.D. 365 (1982)
IBCA-1381-8-80 (Dec. 23, 1982)
IBCA-1603-7-82, 89 I.D. 583 (1982)
605 ----------- IBCA-1299-8-79 (Feb. 12, 1982)
IBCA-1311-10-79, 89 I.D. 30 (1982)
IBCA-1313-11-79 (Sept. 17, 1982)
605(a) -------- IBCA-1506-8-81, 89 I.D. 233 (1982)
IBCA-1550-2-82, 89 I.D. 365 (1982)
607(d) -------- IBCA-1447-3-81, 89 I.D. 92 (1982)
IBCA-1506-8-81, 89 I.D. 233 (1982)
611 ----------- IBCA-1299-8-79 (Feb. 12, 1982)
IBCA-1311-10-79, 89 I.D. 30 (1982)
IBCA-1527-10-81 (Mar. 25, 1982)
IBCA-1506-8-81, 89 I.D. 233 (1982)
IBCA-1313-11-79 (Sept. 17, 1982)

TITLE 42:

sec. 1746 -----------62 IBLA 187 (Mar. 9, 1982)
1988 -----------65 IBLA 26 (June 22, 1982)
2098 -----------63 IBLA 53 (Mar. 30, 1982)
4321 -----------62 IBLA 73 (Feb. 25, 1982)
4321-4347 ------69 IBLA 39 (Nov. 29, 1982)
4321-4361 ------64 IBLA 346 (June 15, 1982)
68 IBLA 26 (Oct. 21, 1982)
4331(b) --------68 IBLA 96 (Oct. 26, 1982)
4332 -----------62 IBLA 73 (Feb. 25, 1982)
64 IBLA 346 (June 15, 1982)
68 IBLA 96 (Oct. 26, 1982)
4332(2)(c) -----68 IBLA 96 (Oct. 26, 1982)
4332(2)(c)(i)-
(v) ----------68 IBLA 96 (Oct. 26, 1982)
4601 ----------- 5 OHA 9 (Aug. 11, 1982)

TITLE 42: (Continued)

sec. 4601 et seq.	4 OHA 244 (Mar. 8, 1982)
4603	5 OHA 53 (Nov. 9, 1982)
4621-4638	4 OHA 278 (June 1, 1982)
4622	4 OHA 216 (Jan. 4, 1982)
	4 OHA 221 (Jan. 5, 1982)
	4 OHA 234 (Feb. 5, 1982)
	4 OHA 252 (Mar. 31, 1982)
	4 OHA 277 (May 17, 1982)
	4 OHA 278 (June 1, 1982)
	5 OHA 40 (Oct. 22, 1982)
4622(a)(2)	4 OHA 234 (Feb. 5, 1982)
	5 OHA 9 (Aug. 11, 1982)
4622(c)	4 OHA 244 (Mar. 8, 1982)
4623	4 OHA 238 (Feb. 8, 1982)
	4 OHA 250 (Mar. 31, 1982)
	5 OHA 53 (Nov. 9, 1982)
	5 OHA 60 (Dec. 6, 1982)
4623(a)	4 OHA 240 (Feb. 16, 1982)
4623(a)(1)(A)	4 OHA 229 (Jan. 29, 1982)
4624	4 OHA 250 (Mar. 31, 1982)
	4 OHA 278 (June 1, 1982)
4633	4 OHA 278 (June 1, 1982)
4651	4 OHA 278 (June 1, 1982)
4653	4 OHA 227 (Jan. 18, 1982)
	4 OHA 272 (Apr. 16, 1982)
4653(1)	5 OHA 58 (Nov. 9, 1982)
6501	68 IBLA 359 (Nov. 22, 1982)
6502	68 IBLA 359 (Nov. 22, 1982)
7151	66 IBLA 307 (Aug. 24, 1982)
7152	66 IBLA 174 (Aug. 12, 1982)
	66 IBLA 265 (Aug. 17, 1982)
7401	68 IBLA 96 (Oct. 26, 1982)

TITLE 43:

sec. 2	62 IBLA 310 (Mar. 19, 1982)
42(b)	7 ANCAB 106, 89 I.D. 293 (1982)
102-106	68 IBLA 342, 89 I.D. 586 (1982)
141	61 IBLA 149 (Jan. 18, 1982)
	66 IBLA 390 (Aug. 31, 1982)
142	61 IBLA 149 (Jan. 18, 1982)
	66 IBLA 390 (Aug. 31, 1982)
154	66 IBLA 92 (July 30, 1982)
	66 IBLA 328 (Aug. 25, 1982)
	67 IBLA 32 (Sept. 7, 1982)
158	69 IBLA 343 (Dec. 28, 1982)
161	67 IBLA 317 (Oct. 1, 1928)
185	68 IBLA 279 (Nov. 17, 1982)
251	66 IBLA 71 (July 29, 1982)
270-1-270-3	61 IBLA 181 (Jan. 26, 1982)
	61 IBLA 189 (Jan. 26, 1982)
	61 IBLA 282 (Feb. 2, 1982)
	61 IBLA 316 (Feb. 8, 1982)
	61 IBLA 399 (Feb. 22, 1982)
	62 IBLA 90 (Feb. 25, 1982)
	63 IBLA 64 (Mar. 30, 1982)
	63 IBLA 74 (Mar. 30, 1982)
	63 IBLA 335 (Apr. 28, 1982)
	63 IBLA 343 (Apr. 28, 1982)
	64 IBLA 72 (May 10, 1982)
	64 IBLA 97 (May 17, 1982)
	64 IBLA 167 (May 25, 1982)
	64 IBLA 180 (May 26, 1982)
	64 IBLA 289 (June 4, 1982)
	64 IBLA 304 (June 8, 1982)
	65 IBLA 26 (June 22, 1982)
	65 IBLA 317 (July 15, 1982)
	66 IBLA 38 (July 23, 1982)

TITLE 43: (Continued)

	66 IBLA 77 (July 29, 1982)
	66 IBLA 367 (Aug. 27, 1982)
	67 IBLA 157 (Sept. 20, 1982)
270-2	61 IBLA 282 (Feb. 2, 1982)
270-3	61 IBLA 282 (Feb. 2, 1982)
	66 IBLA 367 (Aug. 27, 1982)
270-11	64 IBLA 97 (May 17, 1982)
270-12	64 IBLA 97 (May 17, 1982)
291-302	63 IBLA 260 (Apr. 19, 1982)
299	67 IBLA 304, 89 I.D. 496 (1982)
315	61 IBLA 381 (Feb. 17, 1982)
	65 IBLA 196 (June 29, 1982)
	66 IBLA 71 (July 29, 1982)
	67 IBLA 293 (Sept. 29, 1982)
315-315f	65 IBLA 231 (July 9, 1982)
	66 IBLA 109 (Aug. 10, 1982)
315 et seq.	64 IBLA 293 (June 7, 1982)
315a	64 IBLA 293 (June 7, 1982)
	65 IBLA 196 (June 29, 1982)
	66 IBLA 109 (Aug. 10, 1982)
315a-315r	61 IBLA 381 (Feb. 17, 1982)
	65 IBLA 196 (June 29, 1982)
	67 IBLA 293 (Sept. 29, 1982)
315f	64 IBLA 379 (June 15, 1982)
	66 IBLA 150 (Aug. 10, 1982)
	67 IBLA 140 (Sept. 16, 1982)
315g	68 IBLA 11 (Oct. 18, 1982)
315h-315m	65 IBLA 231 (July 9, 1982)
	66 IBLA 109 (Aug. 10, 1982)
315m	69 IBLA 333 (Dec. 28, 1982)
315n	65 IBLA 231 (July 9, 1982)
	66 IBLA 109 (Aug. 10, 1982)
316	64 IBLA 318 (June 10, 1982)
321	61 IBLA 149 (Jan. 18, 1982)
	65 IBLA 338 (July 15, 1982)
	66 IBLA 71 (July 29, 1982)
	69 IBLA 341 (Dec. 28, 1982)
322	66 IBLA 71 (July 29, 1982)
326	62 IBLA 310 (Mar. 19, 1982)
329	68 IBLA 279 (Nov. 17, 1982)
333	68 IBLA 279 (Nov. 17, 1982)
334	68 IBLA 279 (Nov. 17, 1982)
336	68 IBLA 279 (Nov. 17, 1982)
415f	66 IBLA 150 (Aug. 10, 1982)
	67 IBLA 140 (Sept. 16, 1982)
416	66 IBLA 100 (Aug. 4, 1982)
432	66 IBLA 100 (Aug. 4, 1982)
603	M-36944, 89 I.D. 403 (1982)
661	65 IBLA 391 (July 23, 1982)
687a	64 IBLA 318 (June 10, 1982)
	65 IBLA 94 (June 23, 1982)
732	65 IBLA 44 (June 23, 1982)
732-736	67 IBLA 121 (Sept. 16, 1982)
852	66 IBLA 367 (Aug. 27, 1982)
869-869-4	62 IBLA 198 (Mar. 9, 1982)
	64 IBLA 379 (June 15, 1982)
898	66 IBLA 191 (Aug. 13, 1982)
904	67 IBLA 8 (Sept. 1, 1982)
932	64 IBLA 318 (June 10, 1982)
934	68 IBLA 142, 89 I.D. 561 (1982)
934-939	68 IBLA 142, 89 I.D. 561 (1982)
937	68 IBLA 142, 89 I.D. 561 (1982)
945	7 ANCAB 43, 89 I.D. 219 (1982)
950	68 IBLA 142, 89 I.D. 5[illegible] (1982)
956	65 IBLA 391 (July 23, 1982)
959	63 IBLA 176 (Apr. 8, 1982)
	65 IBLA 391 (July 23, 1982)
	68 IBLA 96 (Oct. 26, 1982)

TITLE 43: (Continued)

sec. 961 ----------61 IBLA 343 (Feb. 11, 1982)
63 IBLA 9 (Mar. 25, 1982)
64 IBLA 164 (May 25, 1982)
65 IBLA 144 (June 29, 1982)
971 ----------68 IBLA 184 (Nov. 8, 1982)
971a-971e ----64 IBLA 318 (June 10, 1982)
975 ---------- 7 ANCAB 8, 89 I.D. 118 (1982)
975c ---------65 IBLA 376 (July 20, 1982)
975d --------- 7 ANCAB 43, 89 I.D. 219 (1982)
65 IBLA 376 (July 20, 1982)
975 et seq. -- 7 ANCAB 8, 89 I.D. 118 (1982)
1061 ---------64 IBLA 379 (June 15, 1982)
1068 ----------63 IBLA 12 (Mar. 25, 1982)
64 IBLA 159 (May 25, 1982)
65 IBLA 307 (July 13, 1982)
66 IBLA 374, 89 I.D. 415 (1982)
69 IBLA 347 (Dec. 29, 1982)
1068-1068(b) --69 IBLA 347 (Dec. 29, 1982)
1131(c) -------63 IBLA 165 (Apr. 6, 1982)
1165 ----------64 IBLA 318 (June 10, 1982)
65 IBLA 94 (June 23, 1982)
1166 ----------67 IBLA 100 (Sept. 14, 1982)
1171 ----------67 IBLA 97 (Sept. 13, 1982)
1171(a) -------63 IBLA 85 (Mar. 31, 1982)
63 IBLA 321 (Apr. 27, 1982)
1181a ---------61 IBLA 166 (Jan. 25, 1982)
61 IBLA 393 (Feb. 19, 1982)
61 IBLA 396 (Feb. 22, 1982)
62 IBLA 299 (Mar. 18, 1982)
1181a-1181j ---61 IBLA 166 (Jan. 25, 1982)
1301 et seq. -- 7 ANCAB 1 (Mar. 8, 1982)
1301(a) ------- 6 ANCAB 307, 89 I.D. 14 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
1311(a) ------- 6 ANCAB 307, 89 I.D. 14 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
1311(b) ------- 6 ANCAB 307, 89 I.D. 14 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
1334 ----------67 IBLA 80 (Sept. 10, 1982)
1334(a)(4) ----67 IBLA 80 (Sept. 10, 1982)
1339 ----------65 IBLA 295 (July 13, 1982)
1339(a) -------65 IBLA 295 (July 13, 1982)
1339(b) -------65 IBLA 295 (July 13, 1982)
1340 ----------66 IBLA 397, 89 I.D. 430 (1982)
68 IBLA 250 (Nov. 16, 1982)
1411 ----------64 IBLA 361 (June 16, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 168 (Sept. 21, 1982)
1411-1418 -----67 IBLA 97 (Sept. 13, 1982)
1475 ----------66 IBLA 212 (Aug. 16, 1982)
1601 ---------- 7 ANCAB 43, 89 I.D. 219 (1982)
7 ANCAB 106, 89 I.D. 293 (1982)
63 IBLA 176 (Apr. 8, 1982)
65 IBLA 44 (June 23, 1982)
66 IBLA 204 (Aug. 13, 1982)
67 IBLA 376 (Oct. 8, 1982)
68 IBLA 359 (Nov. 22, 1982)
1601-1610 -----68 IBLA 359 (Nov. 22, 1982)
1601-1628 ----- 6 ANCAB 264 (Jan. 15, 1982)
6 ANCAB 267 (Jan. 15, 1982)
6 ANCAB 270, 89 I.D. 1 (1982)
6 ANCAB 290, 89 I.D. 9 (1982)
6 ANCAB 307, 89 I.D. 14 (1982)
6 ANCAB 340, 89 I.D. 62 (1982)
6 ANCAB 352 (Feb. 16, 1982)
6 ANCAB 359 (Feb. 18, 1982)
6 ANCAB 364 (Feb. 24, 1982)
6 ANCAB 369, 89 I.D. 74 (1982)
7 ANCAB 4 (Mar. 24, 1982)
7 ANCAB 8, 89 I.D. 118 (1982)
7 ANCAB 43, 89 I.D. 219 (1982)

TITLE 43: (Continued)

7 ANCAB 63, 89 I.D. 242 (1982)
7 ANCAB 106, 89 I.D. 293 (1982)
7 ANCAB 132, 89 I.D. 303 (1982)
7 ANCAB 157, 89 I.D. 321 (1982)
7 ANCAB 188, 89 I.D. 346 (1982)
7 ANCAB 203 (June 25, 1982)
63 IBLA 176 (Apr. 8, 1982)
65 IBLA 391 (July 23, 1982)
69 IBLA 1 (Nov. 24, 1982)
69 IBLA 219, 89 I.D. 642 (1982)
1601 et seq. -- 7 ANCAB 8, 89 I.D. 118 (1982)
63 IBLA 335 (Apr. 28, 1982)
1602(e) -------67 IBLA 380 (Oct. 8, 1982)
1607(a) -------68 IBLA 359 (Nov. 22, 1982)
1610 ----------63 IBLA 176 (Apr. 8, 1982)
1610(a) -------67 IBLA 317 (Oct. 1, 1982)
1610(a)(1) ----65 IBLA 44 (June 23, 1982)
1611 ----------63 IBLA 176 (Apr. 8, 1982)
67 IBLA 380 (Oct. 8, 1982)
1611(a) -------67 IBLA 317 (Oct. 1, 1982)
1613 ----------67 IBLA 317 (Oct. 1, 1982)
67 IBLA 380 (Oct. 8, 1982)
1613(c) -------67 IBLA 344 (Oct. 5, 1982)
67 IBLA 376 (Oct. 8, 1982)
1613(c)(4) ----67 IBLA 344 (Oct. 5, 1982)
67 IBLA 376 (Oct. 8, 1982)
67 IBLA 380 (Oct. 8, 1982)
1613(e) ------- 7 ANCAB 43, 89 I.D. 219 (1982)
1613(g) -------63 IBLA 176 (Apr. 8, 1982)
67 IBLA 344 (Oct. 5, 1982)
67 IBLA 380 (Oct. 8, 1982)
1613(h)(5) ----65 IBLA 26 (June 22, 1982)
1615 ----------68 IBLA 174 (Nov. 4, 1982)
1615(b) ------ 7 ANCAB 106, 89 I.D. 293 (1982)
1616(b)(1) ----69 IBLA 219, 89 I.D. 642 (1982)
1617 ----------61 IBLA 181 (Jan. 26, 1982)
61 IBLA 189 (Jan. 26, 1982)
61 IBLA 282 (Feb. 2, 1982)
61 IBLA 316 (Feb. 8, 1982)
61 IBLA 399 (Feb. 22, 1982)
62 IBLA 90 (Feb. 25, 1982)
63 IBLA 64 (Mar. 30, 1982)
63 IBLA 74 (Mar. 30, 1982)
63 IBLA 335 (Apr. 28, 1982)
63 IBLA 343 (Apr. 28, 1982)
64 IBLA 72 (May 10, 1982)
64 IBLA 97 (May 17, 1982)
64 IBLA 167 (May 25, 1982)
64 IBLA 180 (May 26, 1982)
64 IBLA 289 (June 4, 1982)
64 IBLA 304 (June 8, 1982)
66 IBLA 38 (July 23, 1982)
66 IBLA 77 (July 29, 1982)
66 IBLA 367 (Aug. 27, 1982)
67 IBLA 157 (Sept. 20, 1982)
1617(a) -------61 IBLA 282 (Feb. 2, 1982)
63 IBLA 64 (Mar. 30, 1982)
63 IBLA 74 (Mar. 30, 1982)
63 IBLA 335 (Apr. 28, 1982)
64 IBLA 304 (June 8, 1982)
64 IBLA 26 (June 22, 1982)
65 IBLA 317 (July 15, 1982)
66 IBLA 367 (Aug. 27, 1982)
1621 ----------63 IBLA 176 (Apr. 8, 1982)
1621(b) -------67 IBLA 317 (Oct. 1, 1982)
1621(c) ------- 7 ANCAB 106, 89 I.D. 293 (1982)
69 IBLA 160, 89 I.D. 618 (1982)
1621(j) ------- 7 ANCAB 43, 89 I.D. 219 (1982)
1634(a)(1) ----66 IBLA 367 (Aug. 27, 1982)
1701 ----------61 IBLA 166 (Jan. 25, 1982)

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TITLE 43: (Continued)

sec. 1701 - cont'd 61 IBLA 216 (Jan. 28, 1982)
61 IBLA 396 (Feb. 22, 1982)
62 IBLA 203 (Mar. 9, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 317 (Apr. 27, 1982)
64 IBLA 27 (May 6, 1982)
65 IBLA 144 (June 29, 1982)
65 IBLA 271 (July 12, 1982)
65 IBLA 380 (July 20, 1982)
68 IBLA 219 (Nov. 12, 1982)
69 IBLA 180 (Dec. 15, 1982)
1701-1782 -----63 IBLA 9 (Mar. 25, 1982)
1701 *et seq.* -- 7 ANCAB 8, 89 I.D. 118 (1982)
1701(a) -------63 IBLA 19 (Mar. 26, 1982)
4 OHA 257 (Apr. 9, 1982)
1701(a)(8) ----63 IBLA 23 (Mar. 26, 1982)
66 IBLA 222 (Aug. 16, 1982)
1701(a)(9) ---- 4 OHA 257 (Apr. 9, 1982)
1701(a)(12) ---63 IBLA 23 (Mar. 26, 1982)
1702 ----------61 IBLA 166 (Jan. 25, 1982)
62 IBLA 43 (Feb. 24, 1982)
62 IBLA 299 (Mar. 18, 1982)
1702(c) -------68 IBLA 96 (Oct. 26, 1982)
1702(e) -------61 IBLA 300 (Feb. 3, 1982)
63 IBLA 172 (Apr. 8, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 27 (May 6, 1982)
67 IBLA 287 (Sept. 28, 1982)
1702(h) -------61 IBLA 166 (Jan. 25, 1982)
1702(j) -------68 IBLA 272 (Nov. 17, 1982)
1711 ----------63 IBLA 23 (Mar. 26, 1982)
64 IBLA 50 (May 6, 1982)
1711(a) -------61 IBLA 300 (Feb. 3, 1982)
61 IBLA 329 (Feb. 10, 1982)
62 IBLA 319 (Mar. 22, 1982)
63 IBLA 165 (Apr. 6, 1982)
65 IBLA 126 (June 28, 1982)
65 IBLA 271 (July 12, 1982)
1712 ----------61 IBLA 300 (Feb. 3, 1982)
62 IBLA 153 (Mar. 5, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 50 (May 6, 1982)
66 IBLA 287 (Aug. 19, 1982)
1712(c) -------68 IBLA 96 (Oct. 26, 1982)
1713 ----------62 IBLA 328 (Mar. 23, 1982)
66 IBLA 374, 89 I.D. 415 (1982)
1714 ----------62 IBLA 243 (Mar. 15, 1982)
65 IBLA 338 (July 15, 1982)
66 IBLA 100 (Aug. 4, 1982)
1714(a) ------- 7 ANCAB 8, 89 I.D. 118 (1982)
66 IBLA 100 (Aug. 4, 1982)
1714(b)(1) ----68 IBLA 84 (Oct. 21, 1982)
68 IBLA 325 (Nov. 22, 1982)
69 IBLA 180 (Dec. 15, 1982)
1714(b)(1)(c) -68 IBLA 84 (Oct. 21, 1982)
1714(g) -------61 IBLA 220 (Jan. 28, 1982)
68 IBLA 84 (Oct. 21, 1982)
69 IBLA 180 (Dec. 15, 1982)
1714(h) -------68 IBLA 84 (Oct. 21, 1982)
1714(i) ------- 7 ANCAB 8, 89 I.D. 118 (1982)
67 IBLA 380 (Oct. 8, 1982)
1714(l) -------67 IBLA 287 (Sept. 28, 1982)
68 IBLA 84 (Oct. 21, 1982)
1714(l)(1) ----67 IBLA 287 (Sept. 28, 1982)
1716(a) -------63 IBLA 192 (Apr. 8, 1982)
1719(b) -------69 IBLA 118 (Nov. 30, 1982)
1731 ----------61 IBLA 393 (Feb. 19, 1982)
61 IBLA 396 (Feb. 22, 1982)

TITLE 43: (Continued)

sec. 1732 ----------61 IBLA 300 (Feb. 3, 1982)
61 IBLA 393 (Feb. 19, 1982)
62 IBLA 153 (Mar. 5, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 50 (May 6, 1982)
66 IBLA 287 (Aug. 19, 1982)
1732(a) -------61 IBLA 396 (Feb. 22, 1982)
62 IBLA 43 (Feb. 24, 1982)
68 IBLA 96 (Oct. 26, 1982)
1732(b) -------64 IBLA 379 (June 15, 1982)
68 IBLA 96 (Oct. 26, 1982)
1734 ----------63 IBLA 146 (Apr. 6, 1982)
63 IBLA 373 (Apr. 30, 1982)
69 IBLA 251 (Dec. 21, 1982)
1734(c) -------63 IBLA 228, 89 I.D. 207 (1982)
63 IBLA 373 (Apr. 30. 1982)
1740 ----------62 IBLA 215 (Mar. 10, 1982)
66 IBLA 212 (Aug. 16, 1982)
66 IBLA 249 (Aug. 17, 1982)
1744 ----------61 IBLA 94 (Jan. 4, 1982)
61 IBLA 97 (Jan. 4, 1982)
61 IBLA 109 (Jan. 4, 1982)
61 IBLA 120 (Jan. 15, 1982)
61 IBLA 136 (Jan. 15, 1982)
61 IBLA 158 (Jan. 20, 1982)
61 IBLA 161 (Jan. 21, 1982)
61 IBLA 163 (Jan. 25, 1982)
61 IBLA 170 (Jan. 25, 1982)
61 IBLA 171 (Jan. 25, 1982)
61 IBLA 185 (Jan. 26, 1982)
61 IBLA 210 (Jan. 26, 1982)
61 IBLA 216 (Jan. 28, 1982)
61 IBLA 323 (Feb. 8, 1982)
61 IBLA 326 (Feb. 8, 1982)
61 IBLA 347 (Feb. 11, 1982)
61 IBLA 353 (Feb. 11, 1982)
61 IBLA 356 (Feb. 16, 1982)
61 IBLA 359 (Feb. 16, 1982)
61 IBLA 364 (Feb. 16, 1982)
61 IBLA 376 (Feb. 17, 1982)
61 IBLA 391 (Feb. 18, 1982)
62 IBLA 7 (Feb. 23, 1982)
62 IBLA 9 (Feb. 23, 1982)
62 IBLA 25 (Feb. 24, 1982)
62 IBLA 27 (Feb. 24, 1982)
62 IBLA 32 (Feb. 24, 1982)
62 IBLA 35 (Feb. 24, 1982)
62 IBLA 84 (Feb. 25, 1982)
62 IBLA 104 (Mar. 1, 1982)
62 IBLA 107 (Mar. 2, 1982)
62 IBLA 146 (Mar. 5, 1982)
62 IBLA 166 (Mar. 8, 1982)
62 IBLA 215 (Mar. 10, 1982)
62 IBLA 224 (Mar. 10, 1982)
62 IBLA 232 (Mar. 11, 1982)
62 IBLA 238 (Mar. 11, 1982)
62 IBLA 241 (Mar. 11, 1982)
62 IBLA 249 (Mar. 15, 1982)
62 IBLA 252 (Mar. 15, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 291 (Mar. 16, 1982)
62 IBLA 303 (Mar. 18, 1982)
62 IBLA 378 (Mar. 24, 1982)
62 IBLA 397 (Mar. 25, 1982)
62 IBLA 399 (Mar. 25, 1982)
63 IBLA 1 (Mar. 25, 1982)
63 IBLA 5 (Mar. 25, 1982)
63 IBLA 19 (Mar. 26, 1982)

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TITLE 43: (Continued)

sec. 1744 - cont'd
63 IBLA 49 (Mar. 30, 1982)
63 IBLA 51 (Mar. 30, 1982)
63 IBLA 56 (Mar. 30, 1982)
63 IBLA 60 (Mar. 30, 1982)
63 IBLA 67 (Mar. 30, 1982)
63 IBLA 70 (Mar. 30, 1982)
63 IBLA 77 (Mar. 30, 1982)
63 IBLA 115 (Apr. 2, 1982)
63 IBLA 125 (Apr. 5, 1982)
63 IBLA 129 (Apr. 5, 1982)
63 IBLA 146 (Apr. 6, 1982)
63 IBLA 153 (Apr. 6, 1982)
63 IBLA 170 (Apr. 8, 1982)
63 IBLA 195 (Apr. 8, 1982)
63 IBLA 198 (Apr. 8, 1982)
63 IBLA 200 (Apr. 8, 1982)
63 IBLA 203 (Apr. 8, 1982)
63 IBLA 206 (Apr. 9, 1982)
63 IBLA 221 (Apr. 15, 1982)
63 IBLA 231 (Apr. 16, 1982)
63 IBLA 233 (Apr. 19, 1982)
63 IBLA 235 (Apr. 19, 1982)
63 IBLA 266 (Apr. 19, 1982)
63 IBLA 275 (Apr. 19, 1982)
64 IBLA 21 (May 6, 1982)
64 IBLA 23 (May 6, 1982)
64 IBLA 86 (May 12, 1982)
64 IBLA 89 (May 12, 1982)
64 IBLA 101 (May 17, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 111 (May 17, 1982)
64 IBLA 114 (May 19, 1982)
64 IBLA 126 (May 20, 1982)
64 IBLA 139 (May 24, 1982)
64 IBLA 257 (June 2, 1982)
64 IBLA 261 (June 2, 1982)
64 IBLA 264 (June 2, 1982)
64 IBLA 271 (June 2, 1982)
64 IBLA 295 (June 7, 1982)
64 IBLA 297 (June 8, 1982)
64 IBLA 300 (June 8, 1982)
64 IBLA 302 (June 8, 1982)
64 IBLA 313 (June 10, 1982)
64 IBLA 316 (June 10, 1982)
64 IBLA 331 (June 10, 1982)
64 IBLA 334 (June 10, 1982)
64 IBLA 395 (June 17, 1982)
64 IBLA 399 (June 17, 1982)
64 IBLA 402 (June 17, 1982)
65 IBLA 1 (June 17, 1982)
65 IBLA 4 (June 17, 1982)
64 IBLA 6 (June 17, 1982)
65 IBLA 10 (June 17, 1982)
65 IBLA 41 (June 22, 1982)
65 IBLA 59 (June 23, 1982)
65 IBLA 61 (June 23, 1982)
65 IBLA 67 (June 23, 1982)
65 IBLA 69 (June 23, 1982)
65 IBLA 72 (June 23, 1982)
65 IBLA 79 (June 23, 1982)
65 IBLA 82 (June 23, 1982)
65 IBLA 114 (June 25, 1982)
65 IBLA 120 (June 25, 1982)
65 IBLA 122 (June 25, 1982)
65 IBLA 160 (June 29, 1982)
65 IBLA 164 (June 29, 1982)
65 IBLA 167 (June 29, 1982)
65 IBLA 170 (June 29, 1982)
65 IBLA 172 (June 29, 1982)
65 IBLA 175 (June 29, 1982)

TITLE 43: (Continued)

sec. 1744 - cont'd
65 IBLA 178 (June 29, 1982)
65 IBLA 180 (June 29, 1982)
65 IBLA 274 (July 12, 1982)
65 IBLA 277 (July 12, 1982)
65 IBLA 281 (July 12, 1982)
65 IBLA 285 (July 13, 1982)
65 IBLA 287 (July 13, 1982)
65 IBLA 291 (July 13, 1982)
65 IBLA 314 (July 14, 1982)
65 IBLA 335 (July 15, 1982)
65 IBLA 361 (July 20, 1982)
65 IBLA 363 (July 20, 1982)
65 IBLA 367 (July 20, 1982)
65 IBLA 369 (July 20, 1982)
65 IBLA 387 (July 23, 1982)
66 IBLA 31 (July 23, 1982)
66 IBLA 35 (July 23, 1982)
66 IBLA 46 (July 27, 1982)
66 IBLA 132 (Aug. 10, 1982)
66 IBLA 147 (Aug. 10, 1982)
66 IBLA 165 (Aug. 11, 1982)
66 IBLA 171 (Aug. 12, 1982)
66 IBLA 204 (Aug. 13, 1982)
66 IBLA 212 (Aug. 16, 1982)
66 IBLA 226 (Aug. 16, 1982)
66 IBLA 228 (Aug. 16, 1982)
66 IBLA 230 (Aug. 16, 1982)
66 IBLA 279 (Aug. 18, 1982)
66 IBLA 310 (Aug. 24, 1982)
66 IBLA 334 (Aug. 26, 1982)
66 IBLA 390 (Aug. 31, 1982)
67 IBLA 6 (Sept. 1, 1982)
67 IBLA 32 (Sept. 7, 1982)
67 IBLA 64 (Sept. 9, 1982)
67 IBLA 130 (Sept. 16, 1982)
67 IBLA 135 (Sept. 16, 1982)
67 IBLA 138 (Sept. 16, 1982)
67 IBLA 162 (Sept. 21, 1982)
67 IBLA 181 (Sept. 21, 1982)
67 IBLA 218 (Sept. 23, 1982)
67 IBLA 220 (Sept. 23, 1982)
67 IBLA 270 (Sept. 27, 1982)
67 IBLA 272 (Sept. 28, 1982)
67 IBLA 284 (Sept. 29, 1982)
67 IBLA 355 (Oct. 6, 1982)
67 IBLA 370 (Oct. 8, 1982)
67 IBLA 388 (Oct. 8, 1982)
67 IBLA 393 (Oct. 8, 1982)
67 IBLA 398 (Oct. 12, 1982)
68 IBLA 13 (Oct. 18, 1982)
68 IBLA 19 (Oct. 19, 1982)
68 IBLA 24 (Oct. 21, 1982)
68 IBLA 120 (Oct. 26, 1982)
68 IBLA 176 (Nov. 5, 1982)
68 IBLA 189 (Nov. 9, 1982)
68 IBLA 198 (Nov. 9, 1982)
68 IBLA 201 (Nov. 10, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 211 (Nov. 10, 1982)
68 IBLA 213 (Nov. 10, 1982)
68 IBLA 245 (Nov. 16, 1982)
68 IBLA 248 (Nov. 16, 1982)
68 IBLA 260 (Nov. 16, 1982)
68 IBLA 292 (Nov. 19, 1982)
68 IBLA 295 (Nov. 19, 1982)
68 IBLA 301 (Nov. 19, 1982)
68 IBLA 318 (Nov. 19, 1982)
68 IBLA 322 (Nov. 19, 1982)
68 IBLA 390 (Nov. 23, 1982)
68 IBLA 397 (Nov. 23, 1982)

TITLE 43: (Continued)

sec. 1744 - cont'd 69 IBLA 31 (Nov. 26, 1982)
69 IBLA 44 (Nov. 29, 1982)
69 IBLA 48 (Nov. 29, 1982)
69 IBLA 52 (Nov. 29, 1982)
69 IBLA 73 (Nov. 30, 1982)
69 IBLA 82 (Nov. 30, 1982)
69 IBLA 84 (Nov. 30, 1982)
69 IBLA 88 (Nov. 30, 1982)
69 IBLA 91 (Nov. 30, 1982)
69 IBLA 100 (Nov. 30, 1982)
69 IBLA 124 (Dec. 8, 1982)
69 IBLA 127 (Dec. 8, 1982)
69 IBLA 131 (Dec. 8, 1982)
69 IBLA 137 (Dec. 9, 1982)
69 IBLA 160, 89 I.D. 618 (1982)
69 IBLA 194 (Dec. 15, 1982)
69 IBLA 247 (Dec. 20, 1982)
69 IBLA 251 (Dec. 21, 1982)
69 IBLA 270 (Dec. 21, 1982)
69 IBLA 273 (Dec. 21, 1982)
69 IBLA 290 (Dec. 23, 1982)
69 IBLA 300 (Dec. 23, 1982)
69 IBLA 304 (Dec. 23, 1982)
69 IBLA 309 (Dec. 23, 1982)
1744(a) --------61 IBLA 109 (Jan. 4, 1982)
61 IBLA 113 (Jan. 6, 1982)
61 IBLA 120 (Jan. 15, 1982)
61 IBLA 161 (Jan. 21, 1982)
61 IBLA 163 (Jan. 25, 1982)
61 IBLA 185 (Jan. 26, 1982)
61 IBLA 210 (Jan. 26, 1982)
61 IBLA 216 (Jan. 28, 1982)
61 IBLA 323 (Feb. 8, 1982)
61 IBLA 326 (Feb. 8, 1982)
61 IBLA 347 (Feb. 11, 1982)
61 IBLA 356 (Feb. 16, 1982)
61 IBLA 367 (Feb. 17, 1982)
61 IBLA 391 (Feb. 18, 1982)
62 IBLA 9 (Feb. 23, 1982)
62 IBLA 146 (Mar. 5, 1982)
62 IBLA 166 (Mar. 8, 1982)
62 IBLA 215 (Mar. 10, 1982)
62 IBLA 232 (Mar. 11, 1982)
62 IBLA 238 (Mar. 11, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 291 (Mar. 16, 1982)
62 IBLA 303 (Mar. 18, 1982)
62 IBLA 312 (Mar. 19, 1982)
62 IBLA 378 (Mar. 24, 1982)
62 IBLA 397 (Mar. 25, 1982)
62 IBLA 399 (Mar. 25, 1982)
63 IBLA 1 (Mar. 25, 1982)
63 IBLA 5 (Mar. 25, 1982)
63 IBLA 60 (Mar. 30, 1982)
63 IBLA 67 (Mar. 30, 1982)
63 IBLA 70 (Mar. 30, 1982)
63 IBLA 77 (Mar. 30, 1982)
63 IBLA 125 (Apr. 5, 1982)
63 IBLA 203 (Apr. 8, 1982)
63 IBLA 221 (Apr. 15, 1982)
63 IBLA 275 (Apr. 19, 1982)
63 IBLA 326 (Apr. 27, 1982)
64 IBLA 21 (May 6, 1982)
64 IBLA 86 (May 12, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 114 (May 19, 1982)
64 IBLA 126 (May 20, 1982)
64 IBLA 141 (May 24, 1982)
64 IBLA 331 (June 10, 1982)
65 IBLA 164 (June 29, 1982)

TITLE 43: (Continued)

65 IBLA 180 (June 29, 1982)
66 IBLA 46 (July 27, 1982)
66 IBLA 171 (Aug. 12, 1982)
66 IBLA 204 (Aug. 13, 1982)
66 IBLA 212 (Aug. 16, 1982)
67 IBLA 100 (Sept. 14, 1982)
67 IBLA 130 (Sept. 16, 1982)
67 IBLA 388 (Oct. 8, 1982)
68 IBLA 176 (Nov. 5, 1982)
68 IBLA 301 (Nov. 19, 1982)
68 IBLA 318 (Nov. 19, 1982)
68 IBLA 390 (Nov. 23, 1982)
69 IBLA 304 (Dec. 23, 1982)
69 IBLA 309 (Dec. 23, 1982)
1744(a)(1) ----62 IBLA 84 (Feb. 25, 1982)
64 IBLA 89 (May 12, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 141 (May 24, 1982)
66 IBLA 212 (Aug. 16, 1982)
67 IBLA 388 (Oct. 8, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 390 (Nov. 23, 1982)
69 IBLA 304 (Dec. 23, 1982)
69 IBLA 309 (Dec. 23, 1982)
1744(a)(2) ----62 IBLA 84 (Feb. 25, 1982)
63 IBLA 326 (Apr. 27, 1982)
64 IBLA 89 (May 12, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 141 (May 24, 1982)
66 IBLA 212 (Aug. 16, 1982)
67 IBLA 388 (Oct. 8, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 390 (Nov. 23, 1982)
69 IBLA 304 (Dec. 23, 1982)
69 IBLA 309 (Dec. 23, 1982)
1744(b) ------- 7 ANCAB 106, 89 I.D. 293 (1982)
61 IBLA 158 (Jan. 20, 1982)
61 IBLA 356 (Feb. 16, 1982)
62 IBLA 7 (Feb. 23, 1982)
62 IBLA 32 (Feb. 24, 1982)
62 IBLA 146 (Mar. 5, 1982)
62 IBLA 166 (Mar. 8, 1982)
62 IBLA 291 (Mar. 16, 1982)
62 IBLA 378 (Mar. 24, 1982)
63 IBLA 77 (Mar. 30, 1982)
63 IBLA 115 (Apr. 2, 1982)
63 IBLA 146 (Apr. 6, 1982)
63 IBLA 266 (Apr. 19, 1982)
63 IBLA 326 (Apr. 27, 1982)
64 IBLA 89 (May 12, 1982)
64 IBLA 137 (May 20, 1982)
66 IBLA 115 (Aug. 10, 1982)
67 IBLA 64 (Sept. 9, 1982)
67 IBLA 100 (Sept. 14, 1982)
67 IBLA 223 (Sept. 23, 1982)
67 IBLA 388 (Oct. 8, 1982)
69 IBLA 91 (Nov. 30, 1983)
69 IBLA 202 (Dec. 16, 1982)
1744(c) -------61 IBLA 94 (Jan. 4, 1982)
61 IBLA 113 (Jan. 6, 1982)
61 IBLA 120 (Jan. 15, 1982)
61 IBLA 136 (Jan. 15, 1982)
61 IBLA 158 (Jan. 20, 1982)
61 IBLA 161 (Jan. 21, 1982)
61 IBLA 163 (Jan. 25, 1982)
61 IBLA 172 (Jan. 25, 1982)
61 IBLA 210 (Jan. 26, 1982)
61 IBLA 323 (Feb. 8, 1982)
61 IBLA 326 (Feb. 8, 1982)
61 IBLA 347 (Feb. 11, 1982)

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TITLE 43: (Continued)

sec. 1744(c)-cont'd 61 IBLA 353 (Feb. 11, 1982)
61 IBLA 356 (Feb. 16, 1982)
61 IBLA 359 (Feb. 16, 1982)
61 IBLA 367 (Feb. 17, 1982)
62 IBLA 32 (Feb. 24, 1982)
62 IBLA 35 (Feb. 24, 1982)
62 IBLA 84 (Feb. 25, 1982)
62 IBLA 146 (Mar. 5, 1982)
62 IBLA 166 (Mar. 8, 1982)
62 IBLA 232 (Mar. 11, 1982)
62 IBLA 238 (Mar. 11, 1982)
62 IBLA 252 (Mar. 15, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 291 (Mar. 16, 1982)
62 IBLA 303 (Mar. 18, 1982)
62 IBLA 378 (Mar. 24, 1982)
62 IBLA 397 (Mar. 25, 1982)
63 IBLA 1 (Mar. 25, 1982)
63 IBLA 5 (Mar. 25, 1982)
63 IBLA 19 (Mar. 26, 1982)
63 IBLA 49 (Mar. 30, 1982)
63 IBLA 51 (Mar. 30, 1982)
63 IBLA 56 (Mar. 30, 1982)
63 IBLA 60 (Mar. 30, 1982)
63 IBLA 67 (Mar. 30, 1982)
63 IBLA 115 (Apr. 2, 1982)
63 IBLA 125 (Apr. 5, 1982)
63 IBLA 146 (Apr. 6, 1982)
63 IBLA 153 (Apr. 6, 1982)
63 IBLA 198 (Apr. 8, 1982)
63 IBLA 203 (Apr. 8, 1982)
63 IBLA 206 (Apr. 9, 1982)
63 IBLA 275 (Apr. 19, 1982)
63 IBLA 326 (Apr. 27, 1982)
64 IBLA 21 (May 6, 1982)
64 IBLA 86 (May 12, 1982)
64 IBLA 89 (May 12, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 126 (May 20, 1982)
64 IBLA 141 (May 24, 1982)
64 IBLA 257 (June 2, 1982)
64 IBLA 261 (June 2, 1982)
64 IBLA 271 (June 2, 1982)
64 IBLA 297 (June 8, 1982)
64 IBLA 313 (June 10, 1982)
64 IBLA 331 (June 10, 1982)
64 IBLA 395 (June 17, 1982)
64 IBLA 402 (June 17, 1982)
65 IBLA 6 (June 17, 1982)
65 IBLA 22 (June 22, 1982)
65 IBLA 61 (June 23, 1982)
65 IBLA 67 (June 23, 1982)
65 IBLA 79 (June 23, 1982)
65 IBLA 114 (June 25, 1982)
65 IBLA 160 (June 29, 1982)
65 IBLA 170 (June 29, 1982)
65 IBLA 172 (June 29, 1982)
65 IBLA 180 (June 29, 1982)
65 IBLA 277 (July 12, 1982)
65 IBLA 281 (July 12, 1982)
65 IBLA 287 (July 13, 1982)
65 IBLA 369 (July 20, 1982)
66 IBLA 31 (July 23, 1982)
66 IBLA 35 (July 23, 1982)
66 IBLA 46 (July 27, 1982)
66 IBLA 171 (Aug. 12, 1982)
66 IBLA 204 (Aug. 13, 1982)
66 IBLA 212 (Aug. 16, 1982)
66 IBLA 230 (Aug. 16, 1982)
66 IBLA 334 (Aug. 26, 1982)

TITLE 43: (Continued)

67 IBLA 130 (Sept. 16, 1982)
67 IBLA 162 (Sept. 21, 1982)
67 IBLA 370 (Oct. 8, 1982)
68 IBLA 198 (Nov. 9, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 248 (Nov. 16, 1982)
68 IBLA 292 (Nov. 19, 1982)
68 IBLA 318 (Nov. 19, 1982)
68 IBLA 390 (Nov. 23, 1982)
68 IBLA 397 (Nov. 23, 1982)
69 IBLA 31 (Nov. 26, 1982)
69 IBLA 91 (Nov. 30, 1982)
69 IBLA 137 (Dec. 9, 1982)
69 IBLA 304 (Dec. 23, 1982)
69 IBLA 309 (Dec. 23, 1982)
1745 ----------65 IBLA 326 (July 15, 1982)
66 IBLA 374, 89 I.D. 415 (1982)
1745(a) -------66 IBLA 374, 89 I.D. 415 (1982)
1745(c) -------66 IBLA 374, 89 I.D. 415 (1982)
1746 ----------65 IBLA 391 (July 23, 1982)
1751-1753 -----65 IBLA 196 (June 29, 1982)
1752(c) -------67 IBLA 89 (Sept. 13, 1982)
69 IBLA 333 (Dec. 28, 1982)
1761 ----------63 IBLA 347, 89 I.D. 227 (1982)
66 IBLA 53 (July 28, 1982)
66 IBLA 121 (Aug. 10, 1982)
68 IBLA 184 (Nov. 8, 1982)
69 IBLA 110 (Nov. 30, 1982)
1761-1771 -----61 IBLA 343 (Feb. 11, 1982)
62 IBLA 203 (Mar. 9, 1982)
63 IBLA 176 (Apr. 8, 1982)
64 IBLA 164 (May 25, 1982)
64 IBLA 342 (June 15, 1982)
64 IBLA 346 (June 15, 1982)
65 IBLA 391 (July 23, 1982)
69 IBLA 103 (Nov. 30, 1982)
1761(a) -------62 IBLA 133 (Mar. 4, 1982)
65 IBLA 144 (June 29, 1982)
65 IBLA 213 (June 30, 1982)
66 IBLA 121 (Aug. 10, 1982)
66 IBLA 222 (Aug. 16, 1982)
67 IBLA 154 (Sept. 20, 1982)
67 IBLA 287 (Sept. 28, 1982)
1761(a)(4) ----64 IBLA 65 (May 6, 1982)
64 IBLA 172 (May 26, 1982)
1764 ----------69 IBLA 103 (Nov. 30, 1982)
1764(a) -------62 IBLA 81 (Feb. 25, 1982)
1764(b) -------65 IBLA 213 (June 30, 1982)
1764(c) -------65 IBLA 144 (June 29, 1982)
65 IBLA 213 (June 30, 1982)
1764(g) -------63 IBLA 347, 89 I.D. 227 (1982)
64 IBLA 65 (May 6, 1982)
64 IBLA 172 (May 26, 1982)
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64 IBLA 164 (May 25, 1982)
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61 IBLA 222 (Jan. 28, 1982)
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64 IBLA 7 (May 4, 1982)
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64 IBLA 234 (May 27, 1982)
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63 IBLA 5 (Mar. 25, 1982)
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64 IBLA 104 (May 17, 1982)
64 IBLA 234 (May 27, 1982)
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65 IBLA 387 (July 23, 1982)
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65(b) -------66 IBLA 191 (Aug. 13, 1982)
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214 ---------- 7 ANCAB 157, 89 I.D. 321 (1982)
67 IBLA 380 (Oct. 8, 1982)

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ACCOUNTS

(*See also* Fees, Funds, Payments--if included in this Index.)

FEES AND COMMISSIONS

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

PAYMENTS

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Ellis B. Ferguson, 69 IBLA 352 (Dec. 30, 1982)

REFUNDS

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already

ACCOUNTS--Continued

REFUNDS--Continued

patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Romola A. Jarett, 63 IBLA 228 (Apr. 16, 1982)
89 I.D. 207

ACCRETION

(*See also* Boundaries, Public Lands--if included in this Index.)

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

ACQUIRED LANDS

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lovell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

Land acquired by the United States does not become public land by the mere process of its acquisition, and, in the absence of specific statutory direction to the contrary, is not open for location of mining claims under 30 U.S.C. § 22 (1976).

Maurice Duval, Marianne Duval, 68 IBLA 1 (Oct. 12, 1982)

ACT OF JULY 26, 1866

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the

ACT OF JULY 26, 1866--Continued

error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

ACT OF MARCH 3, 1891

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

ACT OF MARCH 3, 1891--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

ACT OF FEBRUARY 28, 1899

BLM is without jurisdiction to consider an application for the lease of public land near or adjacent to a hot springs where the land is within a national forest and the Act of Feb. 28, 1899, *as amended*, 16 U.S.C. § 495 (1976), vests the Secretary of Agriculture with exclusive jurisdiction with respect to the issuance of such leases.

Donn Hopkins, 68 IBLA 184 (Nov. 8, 1982)

ACT OF SEPTEMBER 19, 1914

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

ACT OF NOVEMBER 9, 1921

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

ACT OF MAY 21, 1930

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

ACT OF MAY 21, 1930--Continued

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

An oil and gas lease issued under the Mineral Leasing Act of 1920 does not include the oil and gas deposits underlying a railroad right-of-way, which crosses the leased tract, even though the lease does not expressly except such deposits from its coverage.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

ACT OF APRIL 23, 1932

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

ACT OF AUGUST 28, 1937

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

ACT OF AUGUST 11, 1955

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

ACT OF MARCH 6, 1958

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Gary Lester Gray, Grace Marie Barfield Gray, 67 IBLA 144 (Sept. 22, 1982)

ACT OF SEPTEMBER 26, 1961

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

ACT OF SEPTEMBER 19, 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

ACT OF OCTOBER 8, 1964

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

ACT OF DECEMBER 24, 1970

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease or

ACT OF DECEMBER 24, 1970--Continued

the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

ACT OF SEPTEMBER 28, 1976

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

ACT OF APRIL 3, 1980

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 *et seq.* (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

National Forest lands are not "available public... lands." As such, they are not intended by Congress to be included within the Paiute's proposed reservation enlargement plan under the Paiute Restoration Act.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982)
89 I.D. 403

ADMINISTRATIVE AUTHORITY

(*See also* Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdan Doremus, 61 IBLA 367 (Feb. 17, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982)
89 I.D. 262

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by laches, neglect of duty, failure to act, or delays in the performance of their duties.

Maurice Duval, Marianne Duval, 68 IBLA 1 (Oct. 12, 1982)

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Pay, 68 IBLA 26 (Oct. 21, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Established and longstanding Departmental interpretations relating to issuance of oil and gas leases are binding on all Departmental employees until such time as they are changed by competent authority.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982)
89 I.D. 610

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 19, 1982)

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

ADMINISTRATIVE AUTHORITY--Continued

LACHES--Continued

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

ADMINISTRATIVE PRACTICE

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

ADMINISTRATIVE PRACTICE--Continued

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

Established and longstanding Departmental interpretations relating to issuance of oil and gas leases are binding on all Departmental employees until such time as they are changed by competent authority.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

ADMINISTRATIVE PROCEDURE

(*See also* Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)

GENERALLY

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

B. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant

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ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Although the Postal Service is the agent of BLM to deliver written communications to the address of record of an applicant, where the applicant changes his address giving notice only to the Postal Service and not to BLM, the Postal Service then becomes the agent for the applicant who must bear the responsibility and consequence for failure of the Postal Service to properly deliver mail from BLM to the changed address, where the mail was originally properly dispatched to the address of record of the applicant.

Frank C. Lytle, III, 69 IBLA 210 (Dec. 16, 1982)

ADJUDICATION

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William E. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

ADMINISTRATIVE LAW JUDGES

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

ADMINISTRATIVE PROCEDURE ACT

Sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), does not require that the policy and procedures of the Wilderness Inventory Handbook be promulgated as rules and regulations pursuant to sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553 (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Holter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (M-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Feril, 65 IBLA 231 (July 9, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

BURDEN OF PROOF

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Donald E. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Burr, 65 IBLA 277 (July 12, 1982)

Manuel E. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Rolling Contractors, 4 IBSMA 156 (Sept. 21, 1982)
89 I.D. 475

BURDEN OF PROOF--Continued

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

DECISIONS

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd., and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

DECISIONS--Continued

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

HEARINGS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 55 IBLA 122 (June 25, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William H. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on an issue of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Paul H. Temple, 69 IBLA 54 (Nov. 29, 1982)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

RULEMAKING

Under 5 U.S.C. § 552(a)(1) (1976) and the Supreme Court's holding in Morton v. Ruiz, 415 U.S. 199 (1974), an individual may not be deprived of benefits solely on the basis of an eligibility standard published only in the BIA manual.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

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ADMINISTRATIVE PROCEDURE--Continued

RULEMAKING--Continued

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

SUBSTANTIAL EVIDENCE

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

ALASKA

ALASKA NATIVE CLAIMS SETTLEMENT ACT

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 360 (Oct. 8, 1982)

COAL LEASES AND PERMITS

Pursuant to 43 CFR 3410.2-1(d) an applicant for a coal exploration license is required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. Where a party seeks to participate, it is required to submit information about its exploration plans such that BLM can determine whether such a party has legitimate exploration needs that must be accommodated. Thus, BLM determines whether to allow participation; arrangements concerning participation are then left to the parties.

James W. Taylor & Associates, Inc., 69 IBLA 1 (Nov. 24, 1982)

HOMESITES

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

HOMESTEADS

Under the decision in *Reeves* v. *Andrus*, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

ALASKA--Continued

LAND GRANTS AND SELECTIONS

Generally

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

NATIVE ALLOTMENTS

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected without finality, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(d) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsec. (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, *as amended*, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), *as amended*, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, *as amended*.

Wayne C. Williams (On Reconsideration), 61 IBLA 181 (Jan. 26, 1982)

David E. Stevens, 64 IBLA 72 (May 10, 1982)

Where the State Office rejects a Native allotment application because it was deficient in form and untimely filed and the applicant argues that he timely and properly filed the application, and where the factual record does not clearly support either view, the case will be remanded for a hearing.

Charlie B. Biederman, 61 IBLA 189 (Jan. 26, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to require an applicant for a Native allotment to *complete* 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the *commencement* of use and occupancy or the *filing* of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittant use.

Andrew Gordon McKinley, Annie Bennett (On Reconsideration), 61 IBLA 282 (Feb. 2, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(a)(5)(A), (B), and (C) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that paragraph (1) of this subsection and subsec. (d) shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, *as amended*, if on or before the 180th day following the effective date of this Act the State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. However, where the State's protest describes land which is clearly different from the land claimed by the Native applicant, the Board will instruct BLM to grant the allotment, provided all else is regular.

United States v. Mary S. Nagouk, 61 IBLA 316 (Feb. 8, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Steven Bergman (On Reconsideration), 61 IBLA 399 (Feb. 22, 1982)

Heirs of Macauley Alakayak (On Reconsideration), 62 IBLA 90 (Feb. 25, 1982)

Heirs of Pete Olson, 63 IBLA 64 (Mar. 30, 1982)

Nina Harris, 63 IBLA 74 (Mar. 30, 1982)

Heirs of Madrona Wassillie (On Reconsideration), 64 IBLA 167 (May 25, 1982)

Elsie Bergman (On Reconsideration), 64 IBLA 180 (May 26, 1982)

John A. Paine, 66 IBLA 77 (July 29, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, *inter alia*, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

The Department of the Interior is authorized to approve only Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that she had delivered her application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

Where conflicting evidence contained in a file raises factual issues, BLM should initiate a Government contest so that the factual issues can be resolved at a hearing.

Nora L. Sanford (On Reconsideration), 63 IBLA 335 (Apr. 28, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970) (repealed 1971).

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right of reentry provided the United States by sec. 24 of the Federal Power Act, *as amended*.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

Where a Native allotment application has been rejected for failure to provide adequate evidence of use and occupancy, the case will be remanded to BLM to be held for approval pursuant to sec. 905(a) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2435 (1980), subject to the restrictions of sec. 905(d) on allotments of land withdrawn or classified for powersite purposes, in the absence of the filing of a protest prior to the 180th day following the effective date of the Act.

Myrtle Jaycox, Serafina Anelon, Hilma C. Nakos (On Reconsideration), 64 IBLA 97 (May 17, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

Emily E. Hunt (On Reconsideration), 64 IBLA 304 (June 8, 1982)

Where an application for an allotment describes specific land for which an allotment is sought, but on which land the applicant cannot show the requisite use and occupancy, the death of the allotment applicant terminates all right of reselection by the applicant, and his heirs or his estate may not seek to amend the land description to embrace other land.

"Pending." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

A Native allotment application for withdrawn lands may be granted when the applicant has commenced the required use and occupancy prior to the withdrawal, if all other requirements have been met. The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for herself, and not as a dependent child visiting and using the land in the company of her parents. Native allotment applicant's minority on the date the land was withdrawn does not automatically disqualify the applicant from being able to show independent use and occupancy of the land and applicant should be afforded notice and opportunity for a hearing to prove the adequacy and independence of her use and occupancy.

Catherine Angaiak (On Reconsideration), 65 IBLA 317 (July 15, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), where the land is included in a State selection application filed by Dec. 18, 1971, and is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William H. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Termination after Dec. 18, 1971, of an otherwise acceptable allotment application filed before that date for failure to submit evidence of use and occupancy does not bar approval of the application under that provision. Where such an application was pending on Dec. 18, 1971, and BLM has refused to reinstate and approve the application, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act.

Frederick Howard, 67 IBLA 157 (Sept. 20, 1982)

ALASKA--Continued

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

OIL AND GAS LEASES

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

STATEHOOD ACT

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

ALASKA--Continued

STATEHOOD ACT--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William B. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

TOWNSITES

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no

ALASKA--Continued

TOWNSITES--Continued

other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie H. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 15, 1982)

TRADE AND MANUFACTURING SITES

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

The use and improvement of land in a trade and manufacturing site for the pasturing of horses, the placement of advertising signs for off-site businesses, or the presence of roads which merely cross the land to give access to other property, cannot serve to qualify the claimant to receive title to the site, as all those uses are controlled by other provisions of law and regulation, and are not cognizable as the conduct of "trade, manufacture, or other productive industry" on the site.

Where the claimant to a trade and manufacturing site, which was located for the benefit of businesses being conducted on her husband's adjacent unpatented homestead, relinquishes approximately half the land and the primary improvements on the site so that those lands may be included in the survey of the homestead, her trade and manufacturing site purchase application must be rejected if the remaining lands are not actually occupied by improvements and used and needed in the prosecution of the businesses.

One who is not the owner of the business enterprise which is to be served by activities conducted on a trade and manufacturing site is not a qualified claimant of the site.

United States v. Evelyn H. Bench (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

GENERALLY

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, inter alia, notice and an opportunity for a hearing.

Bill Nekeferoff, 62 IBLA 170 (Mar. 8, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982)
89 I.D. 303

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

GENERALLY--Continued

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 380 (Oct. 8, 1982)

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, *as amended*, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

Ukpeagvik Inupiat Corp., 68 IBLA 359 (Nov. 22, 1982)

ADMINISTRATIVE PROCEDURE

Generally

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, *as amended*, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

43 CFR 4.913(b) provides:

> Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

Conveyances

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in *Appeals of State of Alaska and Seldovia Native Ass'n, Inc.*, 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982)
89 I.D. 346

Decision to Issue Conveyance

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Where in a decision to issue conveyance the Bureau of Land Management lists certain water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, there is no requirement in ANCSA or its implementing regulations that the BLM list those water bodies, if any, which were determined to be nonnavigable and the beds of which are to be conveyed to the grantee corporation(s) and charged against its entitlement.

The Bureau of Land Management is not required to include in a decision to issue conveyance a written statement of reasons for its navigability determinations, if any.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982)
89 I.D. 1

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in *Appeals of State of Alaska and Seldovia Native Ass'n, Inc.*, 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decision to Issue Conveyance--Continued

existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982) 89 I.D. 346

Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

ALASKA NATIVE CLAIMS APPEAL BOARD

Appeals

Generally

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the *Federal Register* or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Decisions

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Dismissal

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board fails to timely respond to an order of the Board requiring that the appellant file notice as to whether it intends to pursue its appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 264 (Jan. 15, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain no issues to be resolved by the Board.

Clara Helgason, 6 ANCAB 267 (Jan. 15, 1982)

An appeal will be dismissed when the decision appealed from is amended pursuant to Board order based upon a stipulation entered into by the parties and a timely appeal has not been taken from the published amended decision.

Kwik, Inc., 6 ANCAB 304 (Jan. 27, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Northway Natives, Inc., 6 ANCAB 338 (Jan. 29, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

State of Alaska, 7 ANCAB 1 (Mar. 8, 1982)

R. Gregory Mead, 7 ANCAB 42 (Apr. 9, 1982)

State of Alaska, Dept. of Transportation & Public Facilities, 7 ANCAB 92 (June 10, 1982)

Danzhit Hanlaii Corp., 7 ANCAB 94 (June 10, 1982)

Doyon, Ltd., 7 ANCAB 96 (June 10, 1982)

State of Alaska, 7 ANCAB 98 (June 10, 1982)

State of Alaska, 7 ANCAB 100 (June 10, 1982)

State of Alaska, 7 ANCAB 102 (June 10, 1982)

--Continued

Dismissal--Continued

Ingalik, Inc., 7 ANCAB 104 (June 14, 1982)

An appeal will be dismissed when the appellant fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Matanuska-Susitna Borough, 7 ANCAB 4 (Mar. 24, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board is in agreement with a motion to dismiss filed by another party to the appeal.

Matanuska-Susitna Borough, 7 ANCAB 89 (May 20, 1982)

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed on jurisdictional grounds, the Board will dismiss the appeal.

William F. Straub, 7 ANCAB 184 (June 23, 1982)

Helge A. Boquist, 7 ANCAB 186 (June 23, 1982)

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed and when the motion for dismissal asserts as a basis therefore appropriate provisions of 43 CFR 4.900 et seq., the Board will dismiss the appeal.

Chickaloon Moose Creek Native Ass'n, Inc., 7 ANCAB 200 (June 24, 1982)

Absent reasons justifying continuance of the appeal as to a specific issue therein, the issue will be dismissed when resolved by settlement stipulation approved by the Alaska Native Claims Appeal Board.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Terry, 7 ANCAB 206 (June 25, 1982)

Jurisdiction

The Board is without jurisdiction to adjudicate the validity of a Native allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

Jurisdiction--Continued

Where the present appeal is Tetlin's first opportunity to challenge BLM's delineation of the land to which they are entitled under ANCSA, their appeal directly addresses a land selection matter within the meaning of 43 CFR 4.1(b)(5) and the appeal is within the Board's jurisdiction.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Parties

The State of Alaska's motion to intervene will not be granted where the granting of such motion would permit the State to pursue, as an appellant, issues which the State failed to appeal timely and which the appellant has been denied standing to raise.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Remand

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Settlement Approval

43 CFR 4.913(b) provides:

> Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

State of Alaska, 7 ANCAB 203 (June 25, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Kevin E. Terry, 7 ANCAB 206 (June 25, 1982)

Standing

The test for standing to appeal a decision under 43 CFR 4.902 requires, in part, that the appellant claim a property interest within the meaning of the regulation. To appeal a § 17(b)(1) public easement decision this portion of the standing requirement is satisfied when the appellant's property interest consists of a § 14(g) valid existing right to which the conveyance of lands under ANCSA is subject.

An appellant claiming standing to appeal a § 17(b)(1) public easement decision must not only claim to have a property interest, but in order to meet the standing test of 43 CFR 4.902, must further assert that the appealed decision affects that property interest by failing to provide the appellant and the public with access to public lands.

Ray DeVilbiss (Wolverine Grazers Ass'n), 6 ANCAB 290 (Jan. 27, 1982) 89 I.D. 9

The appropriate test of standing to appeal a decision to this Board is not whether a person is an aggrieved party, but whether a person claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed.

In response to arguments that the test of whether a person is aggrieved should be applied because it is consistent with judicial requirements for standing, the Board must find itself bound by its own regulations for standing, which require a claim of property interest.

The mere allegation of ownership and use of State and Federal lands as a member of the public does not constitute a claim of property interest in land as is required for standing under regulations in 43 CFR 4.902.

A fee simple ownership interest in a fishing lodge is clearly the type of property interest contemplated by standing regulations in 43 CFR 4.902.

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing requirements in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Where an application for selection made by a Cook Inlet village corporation pursuant to § 12(b) of ANCSA is rejected by the Bureau of Land Management so that the same lands may be conveyed to Cook Inlet Region, Inc., under the terms of an amendment to ANCSA, and when an issue on appeal is whether the status of the lands in question is affected by the amendment, the village corporation's interest in the rejected application constitutes a property interest affected by a determination of the Bureau of Land Management sufficient to confer standing under the regulations in 43 CFR 4.902.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

A riparian owner cannot claim that a determination that a water body is nonnavigable adversely affects his property interest so as to confer standing to appeal within the meaning of regulations in 43 CFR 4.902, where the appeal seeks to have the same water body found navigable and thereby deprive the appellant of a claim of riparian ownership rights.

Decisions made pursuant to ANCSA affect property interests differently with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

When pursuant to lawful authority, lands are withdrawn by Secretary's Order for an Air Navigation Site for the benefit of the Territory of Alaska, and when the Secretary's Order was not rescinded upon Statehood, and the State of Alaska continued operation of the ANS facility, the State has standing to assert a claim of property interest, within the meaning of 43 CFR 4.902, for purposes of appealing the status of the ANS.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

APPEALS

Jurisdiction

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to sec. 14(c) of the Alaska Native Claims Settlement Act. There is no administrative appeal process available to claimants under sec. 14(c), and the only recourse is to a judicial forum.

Circle Civic Community Ass'n, Inc., 67 IBLA 376 (Oct. 8, 1982)

Standing

When lands are withdrawn for an air navigation site for the benefit of the Territory of Alaska, the withdrawal was not rescinded upon statehood, and the State of Alaska continued operation of the air navigation site, the State has standing to assert a claim of property interest within the meaning of 43 CFR 4.902 for the purposes of appealing the status of the air navigation site.

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

APPEALS--Continued

Standing--Continued

An assertion of the public interest does not constitute a claim of property interest in land as is required for standing to appeal under 43 CFR 4.410(b).

Circle Civic Community Ass'n, Inc., 67 IBLA 376 (Oct. 8, 1982)

CONVEYANCES

Generally

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

The conveyance to Cook Inlet Region, Inc. (CIRI), of lands previously patented to the State of Alaska pursuant to P.L. 94-204, 89 Stat. 1145, *as amended* (1976), is in satisfaction of CIRI's ANCSA entitlement; must be treated as a conveyance pursuant to ANCSA; and, unless expressly excepted, is governed by the provisions of ANCSA as interpreted by the courts.

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in *Alaska Public Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Acreage Entitlement

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability

Acreage Entitlement--Continued

determination, and he lacks standing to raise issues of navigability on appeal.

Walt Nappi, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Interim Conveyance

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2641.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

Reconveyances

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, as amended, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2641.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to sec. 14(c) of the Alaska Native Claims Settlement Act. There is no administrative appeal process available to claimants under sec. 14(c), and the only recourse is to a judicial forum.

Circle Civic Community Ass'n, Inc., 67 IBLA 376 (Oct. 8, 1982)

Regional Conveyances

When, by amendment to the Alaska Native Claims Settlement Act, an act of Congress expressly provides that specifically described lands shall be conveyed in fee simple to Cook Inlet Region, Inc., as part of its § 12(c) entitlement under ANCSA, the Bureau of Land Management is required to make conveyance notwithstanding that the same land was earlier made available and application for selection had been filed by a Native village corporation under provision of § 12(b) of ANCSA.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Valid Existing Rights

Generally

When the State of Alaska has continued operation of an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never made application for the withdrawn land under any Federal law, the State's use of the ANS is not "issued" within the meaning of § 14(g) of ANCSA and whatever right the State has to continued use of the land is not protected pursuant to § 14(g).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2641.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 380 (Oct. 8, 1982)

Third-Party Interests

The Board will order the exclusion of a disputed Native allotment from the conveyance of lands pursuant to the Alaska Native Claims Settlement Act pending adjudication of the disputed allotment.

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, *as amended*, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in *Appeals of State of Alaska and Seldovia Native Ass'n, Inc.*, 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982) 89 I.D. 346

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

Theodore J. Almasy, 69 IBLA 160 (Dec. 13, 1982) 89 I.D. 618

DEFINITIONS

Federal Installation

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Frivolous Appeal

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Holding Agency

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Public Lands

Generally

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Nanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Withdrawal for National Defense Purposes

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Withdrawal for National Defense Purposes--Continued

of ANCSA to defeat Native selection of the withdrawn lands.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

EASEMENTS

Generally

There is no requirement in the Alaska Native Claims Settlement Act easement regulations that all of the standard uses described for 25-foot-wide trails be allowed in every easement reservation. To the contrary, the regulations specifically permit variances from standard uses "when justified by special circumstances." 43 CFR 2650.4-7(a)(4). In this case, the evidence supports the use of easement 14 for "travel by foot, dogsleds, [and] animals" (43 CFR 2650.4-7(b)(2)(i)), but the record does not support use by "snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. G.V.W.)." Id.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

Access

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant's assertions regarding public use of the lake, made in connection with an attempt to appeal navigability determinations, are equally relevant to the question of whether the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant has appealed the Bureau of Land Management's failure or refusal to reserve a trail easement to the lake, and appellant's assertions indicate some possibility that the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

The regulations contain safeguards to guarantee the public access to the public domain via easements across Native-selected lands so that other than present existing uses of the public domain may be enjoyed. At 43 CFR 2650.4-7(a)(3) it is provided that a public easement may be reserved absent a demonstration of present existing use if, among other things, there is no reasonable alternative route available or if the public easement is for access to an isolated tract or area of publicly owned land.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

Present Existing Use

Pursuant to 43 CFR 2650.4-7(a)(3), the primary standard for determining which public easements are reasonably necessary for access shall be present existing use. In light of the detailed concern repeatedly expressed in the easement regulations about controlling the "uses" of public easements, it makes little sense to regard the "primary standard" for determining which public easements are reasonably necessary as nothing more than favoring trails, regardless of their purpose, which have recency of use. The most reasonable interpretation of the "present existing use" requirement is that easements substantially conform to existing uses and that such evidence of use be recent.

The regulations contain safeguards to guarantee the public access to the public domain via easements across Native-selected lands so that other than present existing uses of the public domain may be enjoyed. At 43 CFR 2650.4-7(a)(3) it is provided that a public easement may be reserved absent a demonstration of present existing use if, among other things, there is no reasonable alternative route available or if the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Present Existing Use--Continued

public easement is for access to an isolated tract or area of publicly owned land.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

Public Easements

Criteria for reserving public easements for future roads, including railroads, in 43 CFR 2650.4-7(b)(1)(v) require that such easements be both site specific and actually planned for construction within 5 years of the date of conveyance. The minimal submission of a map, along with a letter stating that the map depicts proposed railroad extensions, cannot be found to demonstrate an actual plan for construction within the meaning of the regulation.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

Railroads, Telegraph and Telephone Lines

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in *Alaska Public Easement Defense Fund v. Andrus*, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

Review

When an interested party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is upon the party challenging the determination to show that the decision is erroneous. A decision to reserve easements must be affirmed as long as it is supported by a rational basis.

The failure of BLM to include in the predecision record or the easement reservation decision itself all factors bearing on its selection does not render the decision arbitrary and capricious. The lack of a formal requirement that BLM fully justify its decisions in writing does not mean that BLM may reserve public easements across Native-selected lands without abiding by the selection criteria set forth in the Alaska Native Claims Settlement Act and Departmental regulations, or that BLM need not be able to document a rational basis for its decision to reserve or not reserve an easement.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

NATIVE LAND SELECTIONS

Generally

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Owners of unpatented mining claims located within tracts conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act held not to be entitled to a Departmental adjudication of the validity of their claims prior to conveyance.

Edward D. Moore, Van Moore, A. L. Anderson, 68 IBLA 174 (Nov. 4, 1982)

Village Selections

Under the decision in *Reeves* v. *Andrus*, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, *as amended*, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

Ukpeagvik Inupiat Corp., 68 IBLA 359 (Nov. 22, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NAVIGABLE WATERS

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURVEY

Generally

Where § 13(b) of ANCSA addresses events in the land conveyance process which occur over a period of 3 years or longer, during which time surveys and protraction diagrams may be changed or corrected, it would be unreasonable to conclude that such changes or corrections must be ignored in deference to the survey or protraction in existence on Dec. 18, 1971.

Sec. 13(b) of ANCSA is not a mechanism to determine land entitlement, but is intended to ensure that land is described through use of the most accurate protraction diagrams or surveys.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WITHDRAWALS AND RESERVATIONS

Generally

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

APPEALS

(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

E. V. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Ray Mallory, 68 IBLA 189 (Nov. 9, 1982)

Harold R. Ruppert, 69 IBLA 82 (Nov. 30, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Mal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

APPEALS--Continued

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

Utah Wilderness Ass'n, 65 IBLA 219 (July 9, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Dore, 65 IBLA 340 (July 16, 1982)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

APPEALS--Continued

Where an appeal of a Bureau of Land Management action regarding the triggering of a small business set-aside timber sale program raises only class size issues, the appeal must be dismissed because the Small Business Administration, not the Department of the Interior, determines class size.

Public Timber Purchasers Group, 66 IBLA 244 (Aug. 17, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Maez, 67 IBLA 89 (Sept. 13, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Pay, 68 IBLA 26 (Oct. 21, 1982)

APPEALS--Continued

A decision partly rejecting an oil and gas lease offer because the lands are included in a lease issued to a prior applicant will be affirmed on appeal upon a finding that appellant's contention that the prior applicant failed to comply with the requirements for disclosure of other parties in interest is simply unfounded.

Irvin Wall, 68 IBLA 276 (Nov. 17, 1982)

APPLICATIONS AND ENTRIES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard B. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices

of classification of lands for multiple use management, duly published in the *Federal Register*.

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Nilalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, it is improper to reject the application without first ruling on the petition.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated."

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Mayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, *as amended*, 25 U.S.C. § 334 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Kathron P. Wright Belben, 68 IBLA 179 (Nov. 8, 1982)

FILING

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicants.

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

INHERITABILITY

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Dessar, 63 IBLA 217 (Apr. 13, 1982)

PRIORITY

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

REINSTATEMENT

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, *as amended*, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

VALID EXISTING RIGHTS

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be

APPLICATIONS AND ENTRIES--Continued

VALID EXISTING RIGHTS--Continued

deemed to have vested prior to the effective date of the revocation of the withdrawal.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

VESTED RIGHTS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

APPRAISALS

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 8 OHA 257 (Apr. 9, 1982)

APPRAISALS--Continued

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 35 IBLA 260 (1978).

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

Where rental charges for a reservoir right-of-way are based upon an appraisal report that does not comport with Departmental standards, the decision determining rental charges will be vacated and the case remanded for a new appraisal.

Paradise Oil, Water & Land Development, Inc., 68 IBLA 268 (Nov. 17, 1982)

An appraisal of a right-of-way for an irrigation ditch, granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

Herring Livestock Co., 69 IBLA 110 (Nov. 30, 1982)

ATTORNEY'S FEES

EQUAL ACCESS TO JUSTICE ACT

An administrative appeal not required by statute to be adjudicated according to the provisions of 5 U.S.C. § 554 (1976) is not covered by the attorney's fees provisions of the Equal Access to Justice Act.

In re Attorney's Fees Request of Madelon Blue, 9 IBIA 281 (May 11, 1982) 89 I.D. 241

INDIAN CHILD WELFARE ACT OF 1978

Under the circumstances of this case, there is no authority under the Indian Child Welfare Act of 1978 to pay attorney's fees to appellant.

In re Attorney's Fees Request of Ronald Clabaugh, 9 IBIA 294 (May 26, 1982) 89 I.D. 257

ATTORNEYS

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

BOARD OF INDIAN APPEALS

GENERALLY

On Nov. 16, 1982, the Board of Indian Appeals entered an order in *Burnette v. Deputy Assistant Secretary--Indian Affairs (Operations)*, 10 IBIA 464, dismissing the appeal on grounds of mootness. Although it is not a normal practice of Departmental appeals boards to publish in the I.D.'s any matter which is not a full opinion complete with headnotes, the *Burnette* order is included for publication because it disapproves, in part, a previous decision of the Board of Indian Appeals in *Roger St. Pierre v. Commissioner*, 9 IBIA 203, 89 I.D. 132 (1982).

Robert Burnette (Appellant) v. Deputy Assistant Secretary--Indian Affairs (Operations) (Appellee), 10 IBIA 464 (Nov. 16, 1982) 89 I.D. 609

JURISDICTION

The jurisdiction of the Board of Indian Appeals is governed by 43 CFR 4.330(a) and (b).

The jurisdiction of the Board of Indian Appeals is not determined by the characterization or descriptive title placed on agency action by the deciding official.

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The Board has jurisdiction to determine whether a decision by an official of the BIA is properly characterized as discretionary.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

The Board does not have jurisdiction to review decisions of the Assistant Secretary for Indian Affairs except as those decisions may be referred to it on a case-by-case basis or by appropriate rulemaking.

An appeal from a decision of a BIA Area Director or the Commissioner of Indian Affairs (or Deputy Assistant Secretary--Indian Affairs (Operations)) may be properly before the Board even though a related matter has been decided by the Assistant Secretary for Indian Affairs. However, when the parties in the case before the Board are similarly situated, and the issues arise from the same transaction and are identical to those decided by the Assistant Secretary, the Board, as a matter of comity, will defer to the Assistant Secretary's decision because the appellant has already received a decision by a Secretarial official of the Department.

Kenneth Willie et al. v. Commissioner of Indian Affairs and Anne Begay v. Commissioner of Indian Affairs, 10 IBIA 135 (Oct. 12, 1982)

Under 25 CFR 2.19(a) and (b), when the Commissioner of Indian Affairs, or the official of the BIA exercising the Commissioner's review authority under 25 CFR Part 2, does not issue a decision within 30 days of the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the case.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry B. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

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BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

The Board has jurisdiction to review a decision of the Deputy Assistant Secretary--Indian Affairs (Operations) that is based upon an application of facts to law.

Wesley Wishkeno et al. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21 (Dec. 30, 1982)
89 I.D. 655

BOARD OF LAND APPEALS

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

BOUNDARIES
(*See also* Accretion, Avulsion, Public Lands, Reliction, Surveys of Public Lands--if included in this Index.)

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

BUREAU OF INDIAN AFFAIRS
(*See also* Indian Probate--if included in this Index.)

ADMINISTRATIVE APPEALS

Generally

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982)
89 I.D. 67

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982)
89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982)
89 I.D. 252

Acts of Agents of the United States

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Acts of Agents of the United States--Continued

based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

BUREAU OF LAND MANAGEMENT

(*See also* Mineral Leasing Act--if included in this Index.)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Established and longstanding Departmental interpretations relating to issuance of oil and gas leases are binding on all Departmental employees until such time as they are changed by competent authority.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982) 89 I.D. 561

BLM is without jurisdiction to consider an application for the lease of public land near or adjacent to a hot springs where the land is within a national forest and the Act of Feb. 28, 1899, *as amended*, 16 U.S.C. § 495 (1976), vests the Secretary of Agriculture with exclusive jurisdiction with respect to the issuance of such leases.

Dean Hopkins, 68 IBLA 184 (Nov. 8, 1982)

CLAIMS BY THE UNITED STATES

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

CLAIMS BY THE UNITED STATES--Continued

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill E. Yearsley, Bilalee B. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

COAL LEASES AND PERMITS

(*See also* Mineral Leasing Act--if included in this Index.)

GENERALLY

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

APPLICATIONS

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

Pursuant to 43 CFR 3410.2-1(d) an applicant for a coal exploration license is required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. Where a party seeks to participate, it is required to submit information about its exploration plans such that BLM can determine whether such a party has legitimate exploration needs that must be accommodated. Thus, BLM determines whether to allow participation; arrangements concerning participation are then left to the parties.

James W. Taylor & Associates, Inc., 69 IBLA 1 (Nov. 24, 1982)

LEASES

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp. et al., 63 IBLA 363 (Apr. 29, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later date.

Sunoco Energy Development Co., 65 IBLA 323 (July 15, 1982)

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

A decision proposing a provision in a readjustment coal lease for suspension of continued operations upon the payment of advance royalty will not be reversed merely because it makes the terms and conditions of the payments the subject of a future agreement.

The Bureau of Land Management may properly include provisions requiring submission of new mining and exploration plans in a readjusted coal lease even though a mining plan has been approved, since new or revised plans may be needed for other mineable coalbeds or because rock conditions may require mining changes.

A provision in a readjusted coal lease requiring the lessee to conduct operations so as to avoid damage "to non-Federal lands in the vicinity of the leased lands," and "where practicable, to repair" such damage as does occur, subject to the approval of the lessor, is improper, unenforceable, and void.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, even though it contains no express provision for notification to the lessee, since any authorized use would be subject to the lease.

COAL LEASES AND PERMITS--Continued

LEASES--Continued

Under 30 U.S.C. § 187 (Supp. II, 1978), a coal lease must include a provision requiring twice-monthly payment of wages in the absence of a showing that compliance with the provision would place the lessee in violation of state law.

A readjusted coal lease may properly require that buildings and surface structures be painted in a color which conforms or blends with the natural color of the surrounding area in order to mitigate negative visual impacts in a nearby recreation area where the lessee fails to establish that compliance with the requirement is not infeasible.

Blackhawk Coal Co., 68 IBLA 96 (Oct. 26, 1982)

The position that only companies actually operating common carrier railroads and their "alter egos" are prohibited from holding federal coal leases by sec. 2(c) of the Mineral Lands Leasing Act and the position that affiliates of such companies are also prohibited are both reasonable, judicially defensible constructions of an ambiguous provision of law. The legislative history of sec. 2(c) fails to answer clearly the question whether affiliates of railroad companies are included in or excluded from the coverage of sec. 2(c).

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

COLOR OR CLAIM OF TITLE

GENERALLY

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlys Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

Rajneesh Investment Corp., 65 IBLA 307 (July 13, 1982)

APPLICATIONS

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

Rajneesh Investment Corp., 65 IBLA 307 (July 13, 1982)

A color-of-title claim requires peaceful adverse possession in good faith by a claimant or her predecessors in interest under claim or color of title for the prescribed period of time. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors and when the applicant fails to produce such a document, the application must be rejected.

Carmen R. Warren, 69 IBLA 347 (Dec. 29, 1982)

GOOD FAITH

"Good faith." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willsorth, 64 IBLA 159 (May 25, 1982)

Good faith under the Color of Title Act requires that the claimants and their predecessors in interest honestly believe themselves seised of the title, and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimants or a predecessor.

Carmen R. Warren, 69 IBLA 347 (Dec. 29, 1982)

COMMUNICATION SITES

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communications site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative in his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

COMMUNICATION SITES--Continued

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

CONSTITUTIONAL LAW

GENERALLY

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Poirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress.

Estate of Mary Martin Mateen Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSBJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison C. Locke et al., 65 IBLA 122 (June 25, 1982)

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to decide constitutional issues.

Gobel Bartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

DUE PROCESS

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

CONTESTS AND PROTESTS

(See also Administrative Procedure, Rules of Practice--if included in this Index.)

GENERALLY

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ryalt, 62 IBLA 116 (Mar. 4, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Federal Land Policy and Management Act of 1976,
43 U.S.C. § 1744 (1976).

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

CONTRACTS

(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

CONSTRUCTION AND OPERATION

Actions of Parties

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Allowable Costs

Where a Government audit of a cost-plus-fixed-fee contract raised questions about the reasonableness of certain items of cost and the allocability of other cost items, and the contracting officer's decision generally followed the findings in the audit report, the reasonableness of cost items was a question of fact for the Board to decide and the allocability of costs pursuant to procurement regulations was likewise a matter for the Board to decide.

Onyx Corp., IBCA-1350-4-80 (Apr. 14, 1982)

Where the Board found that the contracting officer had unreasonably disallowed certain costs in their entirety because of the difficulty of allocability, mainly resulting from subcontract work extending beyond the date of acceptance of the final report for the required research study, but also found that the contract work was timely performed, accepted as satisfactory, and was of considerable benefit to the Government; the Board held, by the jury verdict approach, that appellant was entitled to a portion of its claimed additional costs in the amount of $45,000.

Appeal of Eyring Research Institute, IBCA-1169-10-77
(June 25, 1982) 89 I.D. 350

Changed Conditions (Differing Site Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions) --Continued

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Sytlon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

Changes and Extras

A claim for the cost of preparing a technical inventory of field tapes and other data furnished by the Government is denied where the appellant alleges that some of the field tapes were missing and some of the data was received in a deplorable condition, but the Board finds that the concurrence of a Government representative in the taking of the inventory did not provide a predicate for the claim asserted where the preparation of the inventory was considered to be simply an exercise of a management prerogative, irrespective of whether such action was to be viewed as a means of facilitating contract performance or satisfying a contract requirement for the furnishing of demultiplexing documentation.

Appeal of Walden General, Inc., IBCA-1475-6-81
(Oct. 19, 1982) 89 I.D. 529

A contractor's claim for the added cost of furnishing concrete bases for lighting fixtures is denied where the contract required the furnishing of an operational lighting system and there were other contract references to requirements for mounting and bases. The omission of the referenced detail for the bases on the applicable drawing was an obvious omission that placed on the contractor a duty to inquire.

A claim for added work to create a swale in roadways is allowed where the drawing shows the existing subbase to contain the required swale.

Appeal of Tucker & Associates Contracting, Inc.,
IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Upon finding that Government-ordered changes to the contract caused an increase in the cost of and the time required for performance of the contract, and the evidence of record indicating that such changes did not comply with the required procedures set forth in the Task Orders clause of the contract, the Board holds that the contractor is entitled to an equitable adjustment pursuant to the Changes clause of the contract.

Appeal of Allied Repair Service, Inc., IBCA-1381-8-80 (Dec. 23, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses

Where an architect designed a nearly flat roof having a pitch of 4 inches in 20 feet with specifications directing the construction contractor to install the roof in accordance with the manufacturer's installation manual, but the published literature of the manufacturer called for a minimum pitch of 3 inches per foot and contained no provision for installing a roof as designed by the architect, the Board found that leaks in the roof were the result of negligent performance of services on the part of the architect in the design of the building.

Appeal of the Rogers Partnership, IBCA-1259-8-79
(Feb. 12, 1982)

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81
(Mar. 22, 1982) 89 I.D. 111

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11,
1982) 89 I.D. 233

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80
(Sept. 9, 1982) 89 I.D. 449

A claim for additional costs attributed to a suspension of work is denied where the work stoppage resulted from the action of third parties without the fault of the Government.

Appeal of Nielsons, Inc., IBCA-1536-11-81 (Sept. 22,
1982)

Differing Site Conditions (Changed Conditions)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81
(Feb. 12, 1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

In a differing site condition claim under a contract for excavation of a tunnel in the Central Arizona Project where consulting geologists, retained by three different bidders as well as the manufacturer of the tunneling machine, each independently concluded that the geological data furnished by the Bureau of Reclamation indicated there would be sufficient standup time in the top and sides of the tunnel to permit installation of tunnel supports in accordance with the specifications, the Board found a differing site condition existed when the contractor encountered large blocks of rock with no standup time which fell immediately out of the top and sides of the tunnel, interfering with the cutterhead of the tunneling machine and with placement of the precast concrete segments for supporting and lining the tunnel.

In two separate differing site condition claims where the contractor encountered soft invert, which would not support the weight of the tunneling machine, the Board found that a differing site condition existed when the machine encountered a 9-foot layer of clay between two drill holes, neither of which showed a layer of clay, but the Board found there was no differing site condition when the machine encountered very soft rock between two drill holes where only 45 and 50 percent of the core material was recovered from the drill holes and the lack of recovery indicated that soft material, not suitable for coring, was present at the invert level.

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

A claim for a first category differing site condition is denied where a deposit of organic material encountered in excavation did not differ materially from what the contractor could reasonably have expected to encounter from a site examination and the contract indications of subsurface conditions.

Appeal of Parkland Design & Development Corp., IBCA-1442-3-81 (Aug. 24, 1982)

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Syblon-Reid Co., IBCA-1313-11-79 (Sept. 17,
1982)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications

A contractor's claim for the added cost of furnishing concrete bases for lighting fixtures is denied where the contract required the furnishing of an operational lighting system and there were other contract references to requirements for mounting and bases. The omission of the referenced detail for the bases on the applicable drawing was an obvious omission that placed on the contractor a duty to inquire.

A claim for added work to create a swale in roadways is allowed where the drawing shows the existing subbase to contain the required swale.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Duty to Inquire

A contractor's claim for the added cost of furnishing concrete bases for lighting fixtures is denied where the contract required the furnishing of an operational lighting system and there were other contract references to requirements for mounting and bases. The omission of the referenced detail for the bases on the applicable drawing was an obvious omission that placed on the contractor a duty to inquire.

A claim for added work to create a swale in roadways is allowed where the drawing shows the existing subbase to contain the required swale.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Estimated Quantities

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Syblon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

General Rules of Construction

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Labor Laws

The Board denies a Government motion to dismiss an appeal predicated upon the ground, *inter alia*, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Subcontractors and Suppliers

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

The Board denies a Government motion to dismiss an appeal predicated upon the ground, *inter alia*, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Third Persons

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Waiver and Estoppel

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

Warranties

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982) 89 I.D. 449

CONTRACT DISPUTES ACT OF 1978

Interest

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982) 89 I.D. 233

Jurisdiction

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

The Board denies a Government motion to dismiss an appeal predicated upon the ground, *inter alia*, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

DISPUTES AND REMEDIES

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A construction contractor's claim for substantial increases in equitable adjustments allowed by the contracting officer for directed changes is denied where the Board finds that appellant has failed to sustain the burden of proving a causal connection between the costs claimed and the alleged Government actions, and failed to provide reliable cost data to show the Government computations were inadequate compensation for the changed work.

Appeals of Porter Mechanical Contractors, Inc., IBCA-1357-5-80 & IBCA-1366-6-80 (Feb. 1, 1982) 89 I.D. 53

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Where a contractor's conduct and correspondence for a year after delivery of equipment shows acknowledgement of defects which it agrees to repair, a claim for reimbursement for the cost of the repair work is denied where the contractor is unable to prove that the defects did not actually exist.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of R. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

A default termination of a contract for failure to make progress so as to endanger performance is sustained where at the time of termination the contractor was far behind the monthly schedule and the principal grounds relied upon by the appellant as an excusable cause of delay was the failure by the Government to conform to an industry practice for which, however, no proof was offered and which would not constitute an excusable cause of delay even if shown to exist, where, as here, the Government either (i) denies the contentions advanced by the appellant relying upon evidence of record in support of the denial or (ii) shows the contentions to be irrelevant to the question of excusable cause of delay.

A claim for the cost of preparing a technical inventory of field tapes and other data furnished by the Government is denied where the appellant alleges that some of the field tapes were missing and some of the data was received in a deplorable condition, but the Board finds that the concurrence of a Government representative in the taking of the inventory did not provide a predicate for the claim asserted where the preparation of the inventory was considered to be simply an exercise of a management prerogative, irrespective of whether such action was to be viewed as a means of facilitating contract performance or satisfying a contract requirement for the furnishing of demultiplexing documentation.

Appeal of Walden General, Inc., IBCA-1475-6-81 (Oct. 19, 1982) 89 I.D. 529

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages

Measurement

Where the Government failed to notify the architect that it had rejected a solution for leaks proposed by the manufacturer of the roof panels and forwarded by the architect, the Government's failure precluded the architect from submitting a proposal for a conventional built-up roof and resulted in unnecessary and avoidable expense when the Government had the roof repaired by another contractor at a higher cost. The architect was entitled to be paid the difference between the cost of the conventional roof and the higher cost which the Government had deducted from payments due the architect.

Appeal of the Eggers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

Equitable Adjustments

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

Upon finding that Government-ordered changes to the contract caused an increase in the cost of and the time required for performance of the contract, and the evidence of record indicating that such changes did not comply with the required procedures set forth in the Task Orders clause of the contract, the Board holds that the contractor is entitled to an equitable adjustment pursuant to the Changes clause of the contract.

Appeal of Allied Repair Service, Inc., IBCA-1381-8-80 (Dec. 23, 1982)

Jurisdiction

The Board denies a Government motion to dismiss an appeal predicated upon the ground, *inter alia*, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982)
89 I.D. 365

Termination for Convenience

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Termination for Default

Generally

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982)
89 I.D. 100

Where the contractor partially delivered electronic timer units which failed to substantially conform with the contract specifications, and the contractor fails to show that the specifications were otherwise deficient or that its failure to timely deliver acceptable units within the contract performance period was the result of excusable cause of delay, the Government's termination for default was proper.

Appeal of Enviromarine Systems, Inc., IBCA-1366-6-80 (Oct. 19, 1982)
89 I.D. 522

CONTRACTS--Continued

FORMATION AND VALIDITY

Cost-type Contracts

Where the Government entered into a sole source, cost-plus-fixed-fee contract with appellant for the purpose of conducting a research and analysis study to determine the toxicity of certain gases emanating from a citrate process used for flue gas desulfurization in the operation of mines, and appellant entered into a subcontract with a University to accomplish the major portion of the required research, the Board found that the Government was not involved in the formation or preparation of the subcontract, and that although they may have intended to enter into a firm, fixed-price contract, the contracting parties did, in fact, by the clear and unambiguous language employed, enter into a cost-reimbursement type contract.

Appeal of Eyring Research Institute, IBCA-1169-10-77 (June 25, 1982) 89 I.D. 350

A claim for an overrun of a cost-plus-fixed-fee contract is sustained where the overrun resulted from increased overhead rates during appellant's fiscal year after completion of contract performance, and failure to give advance notice in accordance with the Limitation of Cost Clause is excused where through no fault or inadequacy of appellant's accounting or business acquisition procedures, he had no reason to believe, during performance, that an overrun would occur.

Appeal of Metametrics, Inc., IBCA-1552-2-82 (Oct. 27, 1982) 89 I.D. 554

A contractor's claims for additional allowable indirect costs to offset the Government's claim for refunds of overpayments under two contracts are denied where the allowable indirect costs allowed by the Government were based on the contractor's proposal to allocate indirect costs on the basis of salaries and wages rather than total direct costs, and the overpayments resulted from overbillings of direct costs.

Appeals of A. L. Nellum (ALNA), IBCA-1484-7-81 & IBCA-1485-7-81 (Nov. 1, 1982)

A contractor's claim for crediting the value of equipment returned to the Government against disallowed costs under a cost reimbursement contract is denied because the cost of the equipment was allowed against contract expenditures and title to the equipment was in the Government. A second claim that the contract was converted to a fixed price type or that the Government had approved a markup on a subcontract of the entire project to a wholly owned subsidiary was denied for lack of credible evidence that the markup provision was presented to the contracting officer for approval.

Appeal of Crow Creek Sioux Tribe, IBCA-1431-2-81 (Nov. 10, 1982) 89 I.D. 575

Implied and Constructive Contracts

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

The Board found that there was no implied contract with the Government where a management consultant submitted a second proposal for 50 man-days of service to a private corporation established by the Blackfeet Indian Tribe after the consultant's initial proposal concealed the extent of the service contemplated and did not indicate that any additional service would be required. Payment for the service in the initial proposal by a Government grant to the tribe did not give rise to an obligation to pay for the service in the second proposal since there was no Government acceptance of the second proposal and all assurances that the consultant would continue to be paid came from persons outside the Government.

Appeal of W. D. Hyland & Hyland/Associates, IBCA-1332-2-80 (Aug. 31, 1982) 89 I.D. 435

PERFORMANCE OR DEFAULT

Acceptance of Performance

Under a fixed-price contract requiring a report in accordance with a statement of work contained in appellant's letter incorporated into the contract, the Board finds the final report was improperly rejected by applying acceptance criteria not contained in the contract.

Appeal of Boston Technologies, Inc., IBCA-1527-10-81 (Mar. 25, 1982)

A claim by the Government for a credit due to the deletion of a specification requirement for calcium chloride in a roadway base course is denied where the purported deletion was made by an unauthorized person and the nonspecification base course was accepted by the Government with knowledge of the omission of calcium chloride.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Breach

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

Excusable Delays

Upon finding that the contractor had agreed to a modification of the contract whereby the Government extended the completion date and increased the total contract price as consideration for the Government's admitted cause of delay of performance, the Board holds that an unconditional, bilateral settlement was reached

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

resulting in a bar to contractor's subsequent claim based on excusable delay.

Appeal of Environmental Research & Technology, Inc., IBCA-1244-1-79 (July 12, 1982)

A default termination of a contract for failure to make progress so as to endanger performance is sustained where at the time of termination the contractor was far behind the monthly schedule and the principal grounds relied upon by the appellant as an excusable cause of delay was the failure by the Government to conform to an industry practice for which, however, no proof was offered and which would not constitute an excusable cause of delay even if shown to exist, where, as here, the Government either (i) denies the contentions advanced by the appellant relying upon evidence of record in support of the denial or (ii) shows the contentions to be irrelevant to the question of excusable cause of delay.

Appeal of Walden General, Inc., IBCA-1475-6-81
(Oct. 19, 1982) 89 I.D. 529

Inspection

A claim for the costs of rejected concrete for failure to meet the air content requirement of the contract is sustained where the test instrument indicating nonspecification results was not an approved standard for measurement and testing with an approved instrument was not timely made.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Suspension of Work

A claim for additional costs attributed to a suspension of work is denied where the work stoppage resulted from the action of third parties without the fault of the Government.

Appeal of Nielsons, Inc., IBCA-1536-11-81 (Sept. 22, 1982)

Waiver and Estoppel

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

The Board holds: (1) That after waiver of 2 completion dates extending over a 6-month period, a new completion period of 30 days established by the contracting officer was reasonable; (2) that a letter from the contractor, dated 7 days before the end of the final 30-day completion period, advising the Government that it was unable to complete the work constituted an anticipatory breach on the part of the contractor; and (3) appellant therefore failed to establish a right to have the default termination converted to a termination for convenience of the Government under a waiver theory.

Appeal of Environmental Research & Technology, Inc., IBCA-1244-1-79 (July 12, 1982)

CONVEYANCES

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn H. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald E. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

INTEREST CONVEYED

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that

CONVEYANCES--Continued

INTEREST CONVEYED--Continued

right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

DESERT LAND ENTRY

GENERALLY

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

An application for a desert land entry which is not accompanied by the statements of two credible witnesses as required by 43 U.S.C. § 322 (1976), is not properly executed under 43 CFR 2521.2 and is properly rejected as incomplete. Where the application has been filed in a competing situation pursuant to a simultaneous filing, the application may not be corrected and loses its priority in favor of the second drawn application.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where the charges in a private contest complaint against a desert land entry are not corroborated as required by 43 CFR 4.450-4(c), the complaint must be dismissed.

A private contest against a desert land entry that is initiated prior to the expiration of the statutory life of the entry and charges that the entryperson will fail to meet the requirements of the law by the expiration date is premature. Since time remains for the entryperson to fulfill the requirements, it cannot be said with certainty that the contestant has alleged facts which if proved would require cancellation of the entry and thus the contest must be dismissed.

Dale E. Wright v. Joan L. Guiffre, 68 IBLA 279 (Nov. 17, 1982)

APPLICATIONS

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

Gary E. Carter, 65 IBLA 338 (July 15, 1982)

An application for a desert land entry which is not accompanied by the statements of two credible witnesses as required by 43 U.S.C. § 322 (1976), is not properly executed under 43 CFR 2521.2 and is properly rejected as incomplete. Where the application has been filed in a competing situation pursuant to a simultaneous filing, the application may not be corrected and loses its priority in favor of the second drawn application.

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill E. Yearsley, Wilalee D. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

A desert land application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

James R. Hardcastle, 69 IBLA 341 (Dec. 28, 1982)

CLASSIFICATION

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill E. Yearsley, Wilalee D. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

LANDS SUBJECT TO

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arnes Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of

DESERT LAND ENTRY--Continued

LANDS SUBJECT TO--Continued

classification, an application for desert land entry is properly denied.

Bill E. Yearsley, Wilslee M. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

WATER RIGHT

A desert land application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

James R. Hardcastle, 69 IBLA 341 (Dec. 28, 1982)

ENVIRONMENTAL POLICY ACT

(See also National Environmental Policy Act of 1969--if included in this Index.)

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

ENVIRONMENTAL QUALITY

(See also Water Pollution Control--if included in this Index.)

GENERALLY

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James R. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta P. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A determination by BLM refusing to issue an oil and gas lease on the ground that the lands applied for are within outstanding natural areas will be set aside and remanded for clarification where BLM's declarations as to the public interest are conclusory and where the record indicates that approximately half

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

the lands rejected may not actually lie within areas of outstanding environmental values.

Rachalk Production, Inc., 68 IBLA 75 (Oct. 21, 1982)

A provision in a readjusted coal lease requiring the lessee to conduct operations so as to avoid damage "to non-Federal lands in the vicinity of the leased lands," and "where practicable, to repair" such damage as does occur, subject to the approval of the lessor, is improper, unenforceable, and void.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

A readjusted coal lease may properly require that buildings and surface structures be painted in a color which conforms or blends with the natural color of the surrounding area in order to mitigate negative visual impacts in a nearby recreation area where the lessee fails to establish that compliance with the requirement is not infeasible.

Blackhawk Coal Co., 68 IBLA 96 (Oct. 26, 1982)

Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

Dolores H. Lisman, 67 IBLA 72 (Sept. 10, 1982)

EQUITABLE ADJUDICATION

GENERALLY

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Department is not barred by the equitable doctrines of laches or waiver from declaring oil shale placer mining claims null and void, since, until patent issues, it has the power and duty to invalidate adverse interests in public lands as required by governing laws.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

ESTOPPEL

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

ESTOPPEL--Continued

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. E. Colson, 63 IBLA 221 (Apr. 15, 1982)

While employees of the Department might be required to either forward or return documents transmitted to the wrong office, no estoppel can arise where the alleged failure to forward or return misment mail was occasioned by the fact that the document was not actually received by the Department.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Madison E. Locke et al., 65 IBLA 122 (June 25, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

ESTOPPEL--Continued

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Failure to file timely appeal in conformity to Departmental regulations precludes appellant from obtaining review of Administrative Law Judge's initial decision as well as collateral orders.

Estate of George Swift Bird, 10 IBIA 63 (Aug. 16, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

EVIDENCE

GENERALLY

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Arvin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

EVIDENCE--Continued

GENERALLY--Continued

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Weston, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Dove, 65 IBLA 340 (July 16, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

BURDEN OF PROOF

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Donald E. Atkins, 61 IBLA 364 (Feb. 16, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Burr, 65 IBLA 277 (July 12, 1982)

Manuel B. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William B. Goechter et al., 66 IBLA 230 (Aug. 16, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where the Board remands a Government contest for additional evidence needed to ascertain whether a mineral patent applicant has made a discovery, the burden of establishing a prima facie case is properly assigned to the Government.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where one disputes the accuracy of public land surveys made by public officials, it is his responsibility to show that they are, in fact, incorrect. Mere allegations that the surveys may be incorrect are insufficient to rebut the presumption.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

CREDIBILITY

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Heldman, 65 IBLA 180 (June 29, 1982)

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

EVIDENCE--Continued

CREDIBILITY--Continued

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

PREPONDERANCE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor D. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

PRESUMPTIONS

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin F. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard R. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Manuel B. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William B. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Lynda Bagley Dore, 65 IBLA 340 (July 16, 1982)

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Janet Thompson, 65 IBLA 383 (July 20, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as a instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. A copy of a letter addressed to BLM providing the required information coupled with a return receipt card showing receipt thereof will rebut the inference of nonreceipt arising from the absence of the document from the file.

Philip Scaturro, 68 IBLA 8 (Oct. 18, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the payment in the file.

R. E. Frasch, 69 IBLA 66 (Nov. 30, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where one disputes the accuracy of public land surveys made by public officials, it is his responsibility to show that they are, in fact, incorrect. Mere allegations that the surveys may be incorrect are insufficient to rebut the presumption.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

PRIMA FACIE CASE

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montgarret et al., 63 IBLA 35 (Mar. 30, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

SUFFICIENCY

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Diane H. Berndt, Richard W. Byers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Arden P. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin F. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Lynda Bagley Doye, 65 IBLA 340 (July 16, 1982)

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Janet Thompson, 65 IBLA 383 (July 20, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as a instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. A copy of a letter addressed to BLM providing the required information coupled with a return receipt card showing receipt thereof will rebut the inference of nonreceipt arising from the absence of the document from the file.

Philip Scaturro, 68 IBLA 8 (Oct. 18, 1982)

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

FEDERAL EMPLOYEES AND OFFICERS

(*See also* Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)

GENERALLY

An upward amenity adjustment of 2 percent to basic rental rate is correctly calculated in accordance with the economically homogeneous area survey method, IPMR 114-52.303(b), when the number of amenities present for Government-furnished quarters is one more than the average number of amenities present in the private rental survey of comparable private housing in an economically homogeneous area in which the Government rental quarters are located.

Appeal of Mary T. Foss, 5 OHA 15 (Sept. 30, 1982)

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

Where a 7 percent limitation on increases in net basic rental rates was not applied to the rate previous to the one resulting from a survey of an economically homogeneous area, the case will be remanded for a determination of what amount should be credited to the employee for overpayment of rates in accordance with 41 CFR 114-52.602(a)3.

Where the record contains unreconciled allegations concerning facts necessary for the determination of the proper monthly basic rental rate, the case will be remanded for findings of fact.

Where improper guidelines were used to calculate the amenity adjustment for a particular quarters unit, and application of the correct standards to the record indicates that the contested amenities did not exist for that unit, the case will be remanded for a determination of the amenity adjustment in accordance with the correct standards.

The Consumer Price Index adjustment is correctly applied against an employee's biweekly rental payroll deduction.

Appeal of Robert W. Jones, 5 OHA 21 (Oct. 12, 1982)

The 7 percent limitation on rental rate increases imposed by Secretary Andrus to rental increases effective after Dec. 13, 1978, was properly restricted by implementing instructions of the Deputy Assistant Secretary--Policy, Budget, and Administration, to increases in the "net basic rental rate" and did not apply to any passthrough charge collected by the Government for utilities, furnishings, or related services that by law must reflect prevailing community rates.

There is no duplicative charge for furnishings where the monthly basic rental rate is calculated after deducting standard amounts for these items.

Tuba City Housing Appeals Ass'n, 5 OHA 33 (Oct. 12, 1982)

When appealing tenants fail to show that there was anything improper or contrary to stated policy about the compilation of data for and the conclusions of the Regional Survey of an Economically Homogeneous Area affecting the tenants' rentals, in particular with respect to exclusion of rental figures from certain communities in the area, the correct square footage used for tenants' quarters, additional charges for quarters' features not otherwise reflected in the survey's figures for comparable rentals, and incorrect deductions for lack of amenities, then the tenants may have no relief based only on the allegation of faults in the survey.

Where the relevant statements of law and policy require an annual adjustment in rentals for Government-furnished quarters according to a Consumer Price Index factor, there is no error when the Government increases rentals based upon that factor.

The deduction from rental for excessive heating costs is not constituted so as to provide a disincentive to conserve utility commodities; any successful conservation effort results in the loss of some portion of the excessive heating costs deduction but it also results in a higher out-of-pocket savings, thus normally creating a net savings.

The deduction from rentals for unusual transportation costs is a creation of law; the Govenment has no authority to set a deduction amount other than that prescribed by the relevant legal authority even though that authority has decreased over the years the amount allowable for the same distance of isolation.

A proper measure of the appropriateness of a rental charge is that it be set so as to create no barrier to the recruitment or retention of employees; nevertheless, that principle is merely a yardstick against which to measure whether the Government in setting rents has adhered to the principle of comparability and, in the absence of proof that such a barrier has been created while rentals otherwise appear to be comparable, appellants may obtain no relief on the mere allegation of the creation of such a barrier.

The Government reaps no "profit," as the authorities understand that term, when it charges a quarters rental which is otherwise comparable to the private housing market.

Appeal of Jan Perschon et al., 5 OHA 65 (Dec. 21, 1982)

AUTHORITY TO BIND GOVERNMENT

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
(*See also* Hearings--if included in this Index.)

GENERALLY

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will be affirmed where there is insufficient basis in the record to disturb it.

Jack W. Mays, Gary L. Harrell, 66 IBLA 222 (Aug. 16, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30

of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned F. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely these documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation

at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Jack L. Kettler, 68 IBLA 301 (Nov. 19, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in a mining claim being declared abandoned and void.

Oregon Portland Cement Co., 66 IBLA 204 (Aug. 13, 1982)

CORRECTION OF CONVEYANCE DOCUMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

EXCHANGES

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

GRAZING LEASES AND PERMITS

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

INVENTORY AND IDENTIFICATION

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Mangagement determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Amarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

PERMITS

The provisions of sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1976), do not authorize the issuance of temporary use permits absent an existing right-of-way, or for use as a communications site right-of-way.

Dwight L. Zundel, 62 IBLA 81 (Feb. 25, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned Y. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver W. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Divy Divnick, Floyd Vipond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William B. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald B. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Reirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the

Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kenzler, 62 IBLA 224 (Mar. 10, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Gregory R. Harrington, 64 IBLA 331 (June 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Sligco et al., 62 IBLA 260 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Bace et al., 63 IBLA 1 (Mar. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Clive M. Stirland, 65 IBLA 363 (July 20, 1982)

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Carger, 63 IBLA 67 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Jack L. Kettler, 68 IBLA 301 (Nov. 19, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 129 (Apr. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambris, 63 IBLA 170 (Apr. 8, 1982)

Cruz M. Chavez, 67 IBLA 270 (Sept. 27, 1982)

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

J. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

R. Del & Associates, 65 IBLA 170 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Behner III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Verchota, 64 IBLA 23 (May 6, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

George Whitehead, 64 IBLA 111 (May 17, 1982)

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

Where the evidence shows that the owner of unpatented mining claims located after Oct. 21, 1976, in calendar year 1979, did file with BLM by Dec. 30, 1980, a copy of the notice of intention to hold the claims which notice was filed also in the local offices of the state wherein the notices of location were filed, the mining claimant has complied with the statutory requirements of the Federal Land Policy and Management Act of 1976.

AZL Resources, Inc., 64 IBLA 126 (May 20, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 24, 1982)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Donald Klein, Mozelle Klein, 66 IBLA 212 (Aug. 16, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

H. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Harvey A. Wolcott et al., 65 IBLA 369 (July 20, 1982)

Elaine Marianne McLevie, 67 IBLA 220 (Sept. 23, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Bukala, 64 IBLA 313 (June 10, 1982)

Robert J. Maby et al., 67 IBLA 370 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Raymond L. Dinwiddie, 64 IBLA 334 (June 10, 1982)

Don Boon, 68 IBLA 211 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Steve Kosanke, 66 IBLA 46 (July 27, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

Gregory A. Voetsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Heldman, 65 IBLA 180 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Fawn Burr, 65 IBLA 277 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Elmer Transtrum, 65 IBLA 285 (July 13, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandoment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Peter Laczay, 65 IBLA 291 (July 13, 1982)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Herschel Knapp, 65 IBLA 314 (July 14, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Robert A. Sandstedt, Briley Stegveld, 65 IBLA 367 (July 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

James T. Hackworth, 66 IBLA 132 (Aug. 10, 1982)

Carolyn C. Crawford, M. Max Chenault, 68 IBLA 19 (Oct. 19, 1982)

Don Tow, 68 IBLA 213 (Nov. 10, 1982)

Where a mining claim was located in Nov. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (Aug. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Geoffrey L. Warren, 66 IBLA 165 (Aug. 11, 1982)

A. L. Stutenroth, 67 IBLA 6 (Sept. 1, 1982)

Orville E. Williams, Helen C. Williams, 69 IBLA 270 (Dec. 21, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Vernon J. Nell, 66 IBLA 171 (Aug. 12, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Carl Eichenhofer, 66 IBLA 226 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Wade McNeil, Flora McNeil, 66 IBLA 228 (Aug. 16, 1982)

Lawrence Nordstrom, 67 IBLA 398 (Oct. 12, 1982)

James J. McFarlane, 68 IBLA 24 (Oct. 21, 1982)

Robert F. Thompson, 68 IBLA 120 (Oct. 26, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

James D. Braymen, 67 IBLA 138 (Sept. 16, 1982)

The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976 and 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. Failure to file the required instrument within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Robert Brennan, 67 IBLA 218 (Sept. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

John Andrew Batok, 67 IBLA 272 (Sept. 28, 1982)

Where a mining claim was located in Oct. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Roger Ferguson, Sybil R. Ferguson, 67 IBLA 284 (Sept. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of every year thereafter he must file an affidavit of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequences must be borne by the claimant.

Carl H. Quandt, 67 IBLA 355 (Oct. 6, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Blanche N. Peterson, 67 IBLA 388 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed the consequences must be borne by the claimant.

Jack L. Wooley, 68 IBLA 13 (Oct. 18, 1982)

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM district office in Susanville, California, on Dec. 31, 1981, he has not complied with 43 CFR 3833.2-1. The instrument was submitted to the district office after the statutory period for such filings had expired. Further, the district office was not the "proper BLM office" in which to file such a document. The proper office is the BLM California State Office in Sacramento, California, as expressly provided in 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

John Lovelady, 68 IBLA 245 (Nov. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each calendar year following. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, the consequences must be borne by the claimant.

Loyd E. Coley, 68 IBLA 260 (Nov. 16, 1982)

Russell P. Journigan, 69 IBLA 52 (Nov. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of the calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Where a mining claim was located in Dec. 1979, and evidence of assessment work or a proper notice of intention to hold the claim was not filed both in the office where the claim is recorded and in the proper office of BLM on or before Dec. 30, 1980, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

R. Rigby Young, 68 IBLA 397 (Nov. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to

hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where a claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work or notice of intention to hold the claims, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Richard E. Reyes, 69 IBLA 44 (Nov. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Asbestos Mines, Inc., 69 IBLA 100 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Brent E. Young, 69 IBLA 131 (Dec. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file, with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter, a copy of the evidence of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the statutory consequence must be borne by the claimant as set forth in 43 U.S.C. § 1744(c) (1976).

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Klondex Gold & Silver Mining Co., 69 IBLA 247 (Dec. 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the location notice or evidence of assessment work is not timely filed, the claim is properly declared abandoned.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, for any reason, the statutory consequence must be borne by the claimant.

Elton E. Mascari, 69 IBLA 273 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for any reason, the consequence must be borne by the claimant.

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by [illegible] § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Nathan E. Moore, 61 IBLA 391 (Feb. 18, 1982)

Kay E. Krebs, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

W. B. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas E. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Pace et al., 63 IBLA 1 (Mar. 25, 1982)

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Yester Barley, 64 IBLA 86 (May 12, 1982)

Herbert A. Norton, 64 IBLA 89 (May 12, 1982)

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

James Heldman, 65 IBLA 180 (June 29, 1982)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William M. M. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Rosa Murray, 62 IBLA 7 (Feb. 23, 1982)

George Maggio, 64 IBLA 137 (May 20, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Thomas C. Mason et al., 64 IBLA 104 (May 17, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Gregory E. Barrington, 64 IBLA 331 (June 10, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 124 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Fawn Burr, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William E. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

John Weston, 68 IBLA 206 (Nov. 10, 1982)

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

R. Rigby Young, 68 IBLA 397 (Nov. 23, 1982)

James A. Huff, Elizabeth B. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Coates-Lehusen, 69 IBLA 137 (Dec. 9, 1982)

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

James B. Norman, 67 IBLA 223 (Sept. 23, 1982)

Sidney A. Webb, 69 IBLA 202 (Dec. 16, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Frances J. Berger, 63 IBLA 67 (Mar. 30, 1982)

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

F. A. Stacy, 68 IBLA 248 (Nov. 16, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald E. Bannon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(b) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajon Minerals, 64 IBLA 261 (June 2, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

James W. Gough, 65 IBLA 59 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM on Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George E. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. R. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Apr. 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Robert J. Raby et al., 67 IBLA 370 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 20, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM and the accompanying check for the filing fees is dishonored by the bank, the uncollectable check constitutes nonpayment of the filing fees.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Glen W. Taylor, 67 IBLA 393 (Oct. 8, 1982)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a copy of the notice of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

E. F. Davenport, 68 IBLA 198 (Nov. 9, 1982)

Where mining claims were located between July 1960 and August 1966, and evidence of assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Mildred McGee, 68 IBLA 292 (Nov. 19, 1982)

"Date of location." Under Colorado State law, as applied by 43 CFR 3833.0-5(h), the date of location of an unpatented mining claim in Colorado is the date specified in the location certificate. Where the claimant fails to file a copy of the official record of the notice of location of this claim with BLM within 90 days of this date, BLM properly rejects the filing, notwithstanding allegations that the actual date of location was different than the date specified in the location certificate.

Amigo Mining, Inc., 68 IBLA 305 (Nov. 19, 1982)

Where mining claims were located in Mar. 1967 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Douglas E. Martin, 68 IBLA 322 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

D. Wight Young, 69 IBLA 88 (Nov. 30, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims are submitted to BLM for recordation on Oct. 9, 1979, and the service fee therefor is not paid to BLM until Dec. 10, 1979, the recordation date of the notices is Dec. 10, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper office of BLM on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Location notices relating to unpatented mining claims located before Oct. 21, 1976, for which the service fees were not paid to BLM by a negotiable check until Dec. 10, 1979, are not timely filed, and the claims are properly declared abandoned and void.

Maud B. Goehring Conway, Lewis Conway, 69 IBLA 91 (Nov. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper BLM office within the time periods prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM May 14, 1979, but the service fee is not paid with a negotiable check until Dec. 20, 1979, the recordation date of the claims is Dec. 20, 1979. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is Dec. 20, 1979, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

REPEALERS

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie H. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

John G. Nafornick, 69 IBLA 118 (Nov. 30, 1982)

RIGHTS-OF-WAY

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Beltro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

affect rights-of-way previously acquired under the 1866 Act.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will be affirmed where there is insufficient basis in the record to disturb it.

Jack W. Hays, Gary L. Harrell, 66 IBLA 222 (Aug. 16, 1982)

In granting a right-of-way for a domestic water pipeline pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable. However, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a) where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed.

Jean Mountaingrove, Ruth Mountaingrove, 67 IBLA 154 (Sept. 20, 1982)

Where rental charges for a reservoir right-of-way are based upon an appraisal report that does not comport with Departmental standards, the decision determining rental charges will be vacated and the case remanded for a new appraisal.

Paradise Oil, Water & Land Development, Inc., 68 IBLA 268 (Nov. 17, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

In granting a right-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771, where the duration of the grant exceeds 20 years, BLM must condition the grant upon the power to review the grant after 20 years and regular intervals thereafter not to exceed 10 years and to revise and modify its terms at that time as mandated by Departmental regulation, 43 CFR 2801.1-1(i).

Shell Pipe Line Corp., 69 IBLA 103 (Nov. 30, 1982)

RULES AND REGULATIONS

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

WILD AND FREE-ROAMING HORSES AND BURROS

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

WILDERNESS

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'rs, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

While the extent of public support for wilderness preservation is not a proper factor to be considered during the inventory phase of the wilderness review mandated by sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), public comments which relate to the existence or nonexistence of wilderness characteristics within an inventory unit must be evaluated.

While the existence of a realistic possibility that land within an inventory unit possesses wilderness characteristics is sufficient to require that the land be intensively inventoried, such land may be included within a wilderness study area (WSA), only where it is shown that the statutory criteria have, in fact, been met.

Where BLM has refused to designate an area as a wilderness study area (WSA), pursuant to sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), an appellant must not merely show that various errors may have occurred in the consideration of the unit, but is required to show that these errors resulted in an erroneous conclusion as to the unit's suitability for further study.

Sierra Club, 61 IBLA 329 (Feb. 10, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter R. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Mangagement determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Arar, 63 IBLA 172 (Apr. 8, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of

Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, i.e., rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Amarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

E. E. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights,

sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find seclusion.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Gilbert W. Baily, 65 IBLA 223 (July 9, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Tom H. Ford, 66 IBLA 14 (July 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was applied improperly.

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Where the record evinces BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

BLM's practice of examining the mineral potential in the study phase of the wilderness review process, rather than the inventory phase, does not violate sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976).

Sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), does not require that the policy and procedures of the Wilderness Inventory Handbook be promulgated as rules and regulations pursuant to sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553 (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

City of Delta, 66 IBLA 282 (Aug. 19, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sierra Club et al., 66 IBLA 300 (Aug. 20, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

National Public Lands Task Force et al., 66 IBLA 340 (Aug. 26, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires, *inter alia*, that an area designated for wilderness preservation *generally* appear to have been affected *primarily* by the forces of nature with the imprint of man's work *substantially* unnoticeable. The underscored language, taken verbatim from the statute, is ample support for the proposition that a wilderness study area (WSA) need not be free of all intrusions.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Ken Brower, 67 IBLA 124 (Sept. 16, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Charles B. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness, opportunities for solitude, or opportunities for primitive and unconfined recreation, are entitled to considerable deference.

An appellant seeking reversal of a decision to include land in a wilderness study area must show that

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Mitchell Energy Corp., Texas Gas Exploration Corp., 68 IBLA 219 (Nov. 12, 1982)

A decision to establish a wilderness study area pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, is proper absent a showing of compelling reasons requiring modification or reversal. Arguments that the area is affected by outside industrial and commercial activity do not preclude further study of the area's fitness for wilderness classification in the absence of proof that the intrusions by man are so great as to prevent the possibility of wilderness classification.

Arguments which question the ultimate best use of a proposed wilderness study area for wilderness purposes are prematurely raised at the intensive inventory stage of agency review.

Public Service Co. of Colorado, Koch Industries, Inc., 68 IBLA 262 (Nov. 17, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed where appellant fails to point out specific errors of law or fact in the decision below--more than mere disagreement with the conclusion of BLM is required to reverse a decision or place a factual matter at issue.

Kenneth R. Earp, Doris R. Earp, 69 IBLA 182 (Dec. 15, 1982)

WITHDRAWALS

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(g) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

James C. Robinson et al., 68 IBLA 84 (Oct. 21, 1982)

FEES

(*See also* Accounts--if included in this Index.)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

FEES--Continued

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

GEOLOGICAL SURVEY

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

GEOTHERMAL LEASES

(See also Hearings, Mineral Leasing Act--if included in this Index.)

GENERALLY

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

ACREAGE LIMITATIONS

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

GEOTHERMAL LEASES--Continued

APPLICATIONS

Generally

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

COMPETITIVE LEASES

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

CONSENT OF AGENCY

The directives of 30 U.S.C. § 1014(b) (1976) and 43 CFR 3201.1-3 are mandatory and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

R. B. Towne, Jr., 67 IBLA 187 (Sept. 22, 1982)

DISCRETION TO LEASE

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE--Continued

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

ENVIRONMENTAL PROTECTION

Generally

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

GEOTHERMAL LEASES--Continued

KNOWN GEOTHERMAL RESOURCES AREA

An application for a noncompetitive geothermal resources lease must be rejected if the land sought is within a known geothermal resources area and no evidence has been presented that the KGRA determination was in error.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

LANDS SUBJECT TO

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

NONCOMPETITIVE LEASES

An application for a noncompetitive geothermal resources lease must be rejected if the land sought is within a known geothermal resources area and no evidence has been presented that the KGRA determination was in error.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

PATENTED OR ENTERED LANDS

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

REINSTATEMENT

A late rental payment may be "justifiable" and entitle a geothermal lease, which terminated by operation of law, to reinstatement if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, circumstances are within the control of the lessee where the proximate cause of a late payment was a computer error and not the illness of the individual entrusted with making the payment.

U.S. Geothermal Corp., Earth Power Corp., 61 IBLA 265 (Jan. 29, 1982)

STIPULATIONS

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence

GEOTHERMAL LEASES--Continued

STIPULATIONS--Continued

of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

GRAZING AND GRAZING LANDS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

GRAZING LEASES

(*See also* Taylor Grazing Act--if included in this Index.)

APPLICATIONS

Where two conflicting applicants for a grazing lease are preference right applicants, and neither is the holder of an expiring lease, a decision awarding a grazing lease to one applicant and rejecting a conflicting application, rendered in accordance with the governing regulatory standard (43 CFR 4110.5), will not be overturned in the absence of convincing reasons that the award is not warranted.

The Corporation of the Great Southwest, 69 IBLA 333 (Dec. 28, 1982)

PREFERENCE RIGHT APPLICANTS

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

Where two conflicting applicants for a grazing lease are preference right applicants, and neither is the holder of an expiring lease, a decision awarding a grazing lease to one applicant and rejecting a conflicting application, rendered in accordance with the governing regulatory standard (43 CFR 4110.5), will not be overturned in the absence of convincing reasons that the award is not warranted.

The Corporation of the Great Southwest, 69 IBLA 333 (Dec. 28, 1982)

RENEWAL

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

GRAZING PERMITS AND LICENSES

(*See also* Appeals, Hearings, Taylor Grazing Act--if included in this Index.)

GENERALLY

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands and a decision requiring that domestic livestock be ear-tagged will be sustained where the record establishes a rational basis therefor.

C-Punch Corp., 67 IBLA 293 (Sept. 29, 1982)

ADJUDICATION

Implementation of the Taylor Grazing Act of 1934, *as amended*, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

GRAZING PERMITS AND LICENSES--Continued

APPEALS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity of a unit of the Federal range, based on a range survey, will not be disturbed in the absence of positive evidence of error.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

HEARINGS

(*See also* Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permits & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

HEARINGS--Continued

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William H. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

HOMESTEADS (ORDINARY)

(*See also* Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever

HOMESTEADS (ORDINARY)--Continued

GENERALLY--Continued

been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

LANDS SUBJECT TO

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

SETTLEMENT

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

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Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Kathryn F. Wright Nelson, 68 IBLA 179 (Nov. 8, 1982)

CLASSIFICATION

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Bear et al., 67 IBLA 8 (Sept. 1, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

CLASSIFICATION--Continued

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, it is improper to reject the application without first ruling on the petition.

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Bayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

LANDS SUBJECT TO

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

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Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Bayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

INDIAN CHILD WELFARE ACT OF 1978

FINANCIAL GRANT APPLICATIONS

Funding

Under Departmental regulations, areas officially designated to be on or near an Indian reservation are considered part of the reservation for purposes of funding social services programs. Departmental regulations implementing the Indian Child Welfare Act of 1978 do not permit an Indian tribe to combine with a social services corporation within an area designated "near reservation" for social services funding purposes.

Navajo Tribe v. Commissioner of Indian Affairs, 10 IBIA 78 (Aug. 30, 1982) 89 I.D. 428

Failure to timely file application for grant funding under the Indian Child Welfare Act of 1978 permits rejection of late offers pursuant to Departmental notice and regulation.

Indian Lodge Consortium & Chiloquin Indian Lodge v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 9 (Dec. 10, 1982)

INDIAN LANDS

(*See also* Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)

ALLOTMENTS

Alienation

Under Departmental and judicial precedents, the Secretary of the Interior has the authority to give retroactive approval to the conveyance of Indian trust or restricted land despite the fact that the Indian grantor has died before approval is given.

The Secretary or his delegate has the authority to approve a conveyance of Indian trust or restricted land

INDIAN LANDS--Continued

ALLOTMENTS--Continued

Alienation--Continued

after the death of the Indian grantor if the Secretary is satisfied that the consideration for the conveyance was adequate; the grantor received the consideration; and there was no fraud, overreaching, or other illegality in the procurement of the conveyance.

Wesley Wishkeno et al. v. Deputy Assistant Secretary--Indian Affairs (Operations). 11 IBIA 21 (Dec. 30, 1982)
89 I.D. 655

ASSIGNMENTS

While portions of assigned Indian trust land might be properly canceled for nonuse by appellant assignee, where it appeared she had leased nonresidential portions of the assigned lands despite provisions of her assignment which required the lands be devoted entirely to her exclusive personal use and that of her heirs, cancellation of the assignment, even if found to be a legally proper response to the leasing, may not be ordered without giving prior notice of the proposed action, including the reasons therefor, and an opportunity to respond.

Lois Jean Brewer v. Acting Deputy Assistant Secretary--Indian Affairs (Operations). 10 IBIA 110 (Sept. 30, 1982)
89 I.D. 488

CEDED LANDS

Generally

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Hansen et al., 63 IBLA 12 (Mar. 25, 1982)

Restoration

Restoration of ceded lands to tribal ownership under sec. 3 of the Indian Reorganization Act of June 18, 1934, held not to require apportionment of income from restored lands on the basis of populations at the time of cession.

Delaware Tribe of Western Oklahoma v. Acting Deputy Assistant Secretary--Indian Affairs (Operations).
10 IBIA 40 (July 30, 1982) 89 I.D. 392

The Seneca-Cayuga Tribe ceded lands to the United States by treaty which provided for creation of a reservation for Wyandotte Tribe. Where the Wyandotte Tribe later ceded the lands to the United States for use as school lands, the subsequent restoration of those lands by the United States to the Wyandotte Tribe, under 40 U.S.C. § 483(a)(2), was held proper.

Seneca-Cayuga Tribe of Oklahoma v. Deputy Assistant Secretary--Indian Affairs, 10 IBIA 90 (Sept. 2, 1982)
89 I.D. 441

INDIAN LANDS--Continued

LEASES AND PERMITS

Generally

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert D. Wedding v. Area Director, Portland Area Office, Bureau of Indian Affairs. 9 IBIA 158 (Jan. 26, 1982)

Grazing

Allocation

Under 25 CFR 151.10, the tribe establishes procedures and priorities for allocation of tribal, tribally controlled Government, and individual lands.

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is a higher priority user of land than an Indian grazing non-Indian-owned livestock.

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

Daniel Conway v. Acting Area Director, Billings Area Office, Bureau of Indian Affairs. 10 IBIA 25 (July 16, 1982)
89 I.D. 382

Revocation or Cancellation

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

Daniel Conway v. Acting Area Director, Billings Area Office, Bureau of Indian Affairs. 10 IBIA 25 (July 16, 1982)
89 I.D. 382

Long-term Business/Agriculture

Rentals

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert D. Wedding v. Area Director, Portland Area Office, Bureau of Indian Affairs. 9 IBIA 158 (Jan. 26, 1982)

Court's decision in *Byrd* v. *Andrus*, No. C-79-229 (E.D. Wash. 1981), rev'g *Byrd* v. *Commissioner*, 7 IBIA 142 (1979), held controlling where contested leases at issue in pending case and *Byrd* were prepared by the same persons and are identical in pertinent provisions except for the stated percentage of limitation upon increase or decrease. Under the circumstances of this

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business/Agriculture--Continued

Rentals--Continued

case, a 25 percent limitation upon future rental adjustments was imposed under the terms of the lease agreement negotiated with the agency.

Robert Seabury v. Commissioner of Indian Affairs, 11 IBIA 6 (Dec. 6, 1982)

Oil and Gas

Sec. 2 of the 1938 Tribal Mineral Leasing Act, codified at 25 U.S.C. § 396b (1976), requires advertisement for competitive bids prior to leasing of unallotted tribal lands for oil and gas development where the leasing tribe is not organized under the provisions of the Indian Reorganization Act of June 18, 1934.

Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72 (Aug. 25, 1982) 89 I.D. 412

Rental Rates

Rental increase based upon calculated increase in value of leased Indian trust land was properly assessed under terms of a written lease permitting rental adjustment at 5-year intervals.

Gregory Snelson v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 57 (July 30, 1982)

PATENT IN FEE

Jurisdiction

While the Federal trust responsibility over allotted land is extinguished when ownership of the land is acquired by a non-Indian, an erroneous heirship determination involving an interest in trust lands passing to a non-Indian does not prevent correction of Department records when a fee patent has not yet been issued. Departmental regulations enable the Department to correct its records to reflect the factual circumstances of the case and to correct discovery of legal error while the probate of a trust estate is still pending within the Department.

Estate of Bernita Elizabeth Stamp Parton, 9 IBIA 200 (Mar. 22, 1982)

RESTRICTED ALLOTMENT

Under Departmental and judicial precedents, the Secretary of the Interior has the authority to give retroactive approval to the conveyance of Indian trust or restricted land despite the fact that the Indian grantor has died before approval is given.

The Secretary or his delegate has the authority to approve a conveyance of Indian trust or restricted land after the death of the Indian grantor if the Secretary is satisfied that the consideration for the conveyance was adequate; the grantor received the consideration; and there was no fraud, overreaching, or other illegality in the procurement of the conveyance.

Wesley Wishkeno et al. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21 (Dec. 30, 1982) 89 I.D. 655

INDIAN LANDS--Continued

TRIBAL LANDS

Sec. 2 of the 1938 Tribal Mineral Leasing Act, codified at 25 U.S.C. § 396b (1976), requires advertisement for competitive bids prior to leasing of unallotted tribal lands for oil and gas development where the leasing tribe is not organized under the provisions of the Indian Reorganization Act of June 18, 1934.

Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72 (Aug. 25, 1982) 89 I.D. 412

INDIAN PROBATE
(*See also* Appeals, Bureau of Indian Affairs, Hearings, Indian Lands, Indian Tribes, Rules of Practice--if included in this Index.)

ADMINISTRATIVE PROCEDURE (*See also* HEARING, REHEARING--if included in this Index.)

Applicability to Indian Probate

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

ADOPTION (*See also* CHILDREN, ADOPTED--if included in this Index.)

Generally

Proof of adoption in Indian probate proceedings under the jurisdiction of the Department of the Interior is governed by Federal statute as expressed in 25 U.S.C. § 372a (1976).

Estate of Mary Martin Mateos Andrew Caye, 9 IBIA 196 (Mar. 15, 1982)

APPEAL (*See also* PLEADING, RECONSIDERATION--if included in this Index.)

Dismissal

Under 43 CFR 4.320 (1981), service of a copy of a notice of appeal on all interested parties is not a jurisdictional requirement, and an appeal will not be dismissed for failure of service when interested parties have received actual notice of the pendency of the appeal.

Estate of Wilma Florence First Youngman, 10 IBIA 3 (June 4, 1982) 89 I.D. 291

INDIAN PROBATE--Continued

APPEAL (*See also* PLEADING, RECONSIDERATION--if included in this Index.)--Continued

Standing to Appeal

Failure to file timely appeal in conformity to Departmental regulations precludes appellant from obtaining review of Administrative Law Judge's initial decision as well as collateral orders.

Estate of George Swift Bird, 10 IBIA 63 (Aug. 16, 1982)

CHILDREN, ILLEGITIMATE (*See also* INHERITING--if included in this Index.)

Right to Inherit

Acts of Congress Controlling

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

EVIDENCE

Insufficiency of

At a hearing ordered upon a petition for reopening an estate to permit evidence to be taken to rebut an initial determination of heirship, the burden of establishing that the initial order was in error is upon the petitioners. Proof that decedent was survived by a son offered by the mother of the child and supported by a State birth certificate and the judicial admission of decedent that the child was his son was not overcome by statements of other relatives of decedent that decedent had denied paternity and conducted himself as though he were childless.

Estate of Robert H. Morin, 9 IBIA 188 (Mar. 5, 1982)

Where appellant children sought to overturn finding that appellee was a daughter of decedent, which finding was based in part upon a birth certificate showing decedent to be appellee's father and upon testimony of a relative of the mother concerning the circumstances of appellee's birth, the offered testimony of another man that he instead could possibly have been the father, which was vague and uncorroborated by other evidence, was insufficient to support reversal of prior findings concerning heirship.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

The testimony of decedent's wife and legitimate children that they were unaware of the existence of an illegitimate child until after decedent's death was insufficient to support reversal of finding of paternity based in part upon census records and upon the testimony of appellee's mother.

Estate of Harry H. Johnson, 10 IBIA 1 (June 3, 1982)

INDIAN PROBATE--Continued

EVIDENCE--Continued

Insufficiency of--Continued

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

Reopening of estate closed for 45 years was properly denied where the petition to reopen and record of prior proceedings taken together established petitioner lacked evidence to show error in the determination of heirs made by the examiner in 1937.

Estate of Frank Pays, 10 IBIA 61 (July 30, 1982)

GUARDIAN AD LITEM

Generally

When a party in interest was a minor at the time of the probate proceeding at issue, he cannot deny notice of said proceedings when notice was given to a guardian *ad litem* on his behalf and the guardian *ad litem* appointed by the Examiner of Inheritance, now Administrative Law Judge, appeared at the hearing on his behalf and was present at every stage of the hearing.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian *ad litem* of a minor constitutes notice to the minor.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

KLAMATH TRIBE

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Bright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Nixon Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

LIMITATION ON ACTIONS (*See also* CLAIM AGAINST ESTATE--if included in this Index.)

In accordance with Department practice, the Board will consider four factors in ascertaining whether its quasi-judicial decisions may be applied retroactively: (1) the nature of the reliance placed upon the prior applications of law by the parties; (2) the harm or prejudice to those who relied upon previous principles of law; (3) the purpose of the law in light of public policy; and (4) the harm to the administration of justice and public purpose.

Estate of Nellie Brown, 11 IBIA 1 (Nov. 30, 1982)

NOTICE OF HEARING

Generally

When a party in interest was a minor at the time of the probate proceeding at issue, he cannot deny notice of said proceedings when notice was given to a guardian *ad litem* on his behalf and the guardian *ad litem* appointed by the Examiner of Inheritance, now Administrative Law Judge, appeared at the hearing on his behalf and was present at every stage of the hearing.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian *ad litem* of a minor constitutes notice to the minor.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

Jurisdictional

A party who has received actual notice of a probate hearing lacks standing to file a petition to reopen.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

REOPENING

Generally

A petition to reopen an Indian estate and its supporting documentation must, to be favorably considered, present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

Estate of Mary Martin Mateen Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

When reopening is denied by the Administrative Law Judge, a person seeking reopening should offer the evidence that would be presented at an evidentiary hearing to the Board of Indian Appeals which shall then decide, based upon that evidence, whether a sufficient showing was made to mandate reopening.

Reopening is granted for the purpose of preventing a miscarriage of justice based upon a showing that the evidence presented at the original hearing was incorrect, incomplete, or otherwise inadequate.

Estate of Wilma Florence First Youngman, 10 IBIA 3 (June 4, 1982)
89 I.D. 291

REOPENING--Continued

Generally--Continued

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

Reopening of estate closed for 45 years was properly denied where the petition to reopen and record of prior proceedings taken together established petitioner lacked evidence to show error in the determination of heirs made by the examiner in 1937.

Estate of Frank Pays, 10 IBIA 61 (July 30, 1982)

A petition to reopen the probate of an Indian trust estate must, to be favorably considered, present some legal theory and the factual basis set out in supporting documentation to support the claimed relief.

Estate of Clara Whitehip, 10 IBIA 107 (Sept. 29, 1982)

The Board has frequently held that petitions to reopen closed estates require compelling proof that delay in requesting relief has not been occasioned by lack of diligence on the part of the petitioning parties.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

The Board has consistently held that petitions to reopen estates which have been closed for more than 3 years require compelling proof that the delay in requesting relief has not been occasioned by lack of diligence on the part of the petitioning parties.

Estate of Nellie Brown, 11 IBIA 1 (Nov. 30, 1982)

Standing to Petition for Reopening

Because the Department's regulations authorize the reopening of estates closed for more than 3 years, a petition filed pursuant to 43 CFR 4.242(h) cannot be summarily dismissed for untimeliness.

A party who has received actual notice of a probate hearing lacks standing to file a petition to reopen.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian *ad litem* of a minor constitutes notice to the minor.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

INDIAN PROBATE--Continued

STATE LAW

Generally

It is not a proper function of the Board of Indian Appeals to determine whether a state law is in violation of the United States Constitution.

Estate of Nellie Brown, 11 IBIA 1 (Nov. 30, 1982)

Applicability to Indian Probate, Intestate Estates

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982)
89 I.D. 193

Applicability to Indian Probate, Testate

The Administrative Law Judge correctly ruled that the determination of the identity of all a decedent's heirs is unnecessary in a case where there is found to be a valid will disposing of the testator's entire estate.

Estate of Frank (Francis) Keahtigh, 9 IBIA 190 (Mar. 9, 1982)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)

Generally

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

43 CFR 4.260(b) does not require that all Indian wills be submitted to the agency superintendent and examined by the Office of the Solicitor.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Disapproval of Will

An Indian will that evidences a rational testamentary scheme will not be disapproved.

Estate of Aaron (Allen) Ramsey, 11 IBIA 16 (Dec. 28, 1982)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Option to Purchase Real Property

An Indian testator may create an option to purchase trust real property by will.

Estate of Thomas Hall, Sr., 10 IBIA 17 (June 28, 1982)
89 I.D. 361

Publication

There is no requirement in 43 CFR 4.260 that the testatrix publish her will by declaring to the witnesses that it is her last will and testament or that she be the person who requests the witnesses to sign.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

State Law

Applicability to Indian Probate

The execution of an Indian will is controlled by 25 U.S.C. § 373 (1976) and regulations published in 43 CFR 4.260-.262, not by state law.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Testamentary Capacity

Generally

The burden of proving lack of testamentary capacity is on those contesting the will.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Witnesses' Testimony

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since youth and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and directed devises of trust property to each of her surviving children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children ultimately benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable under the circumstances.

Where the witnesses to an Indian will were agency clerks who were acquainted through prior business dealings with decedent and testified they knew her to be the competent manager of a farm composed largely of trust lands which she was instrumental in acquiring through land purchases, exchanges, and leases which she arranged, the testimony of a group of treating physicians concerning the effect of two amputations upon decedent's overall health did not tend to contradict the witnesses' testimony that decedent was competent to make a will, nor did the fact that decedent had become an invalid indicate that she lacked competence to make a will.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

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INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Undue Influence

To invalidate an Indian will because of undue influence upon a testator, it must be shown: (1) that he was susceptible of being dominated by another; (2) that the person allegedly influencing him in the execution of the will was capable of controlling his mind and actions; (3) that such person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Unnatural Will

A will is not unnatural even when it leaves only a life estate to testatrix's son when the testamentary scheme is a reasonable response to the desires of the testatrix.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

WITNESSES

Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed on appeal because he had the opportunity to observe and hear the witnesses.

Estate of Grace Akeen, a.k.a. Grace Akins, 10 IBIA 14 (June 23, 1982)

Estate of Joshua Stone Arrow, 10 IBIA 104 (Sept. 28, 1982)

INDIAN REORGANIZATION ACT

(See also Wheeler-Howard Act--if included in this Index.)

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

INDIAN TRIBES

(See also Appeals, Indian Probate--if included in this Index.)

CONSTITUTION, BYLAWS AND ORDINANCES

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

ELECTIONS

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982) 89 I.D. 252

FEDERAL RECOGNITION

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

JUDGMENT FUNDS

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

INDIAN TRIBES--Continued

JUDGMENT FUNDS--Continued

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

RESERVATION BOUNDARY

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 et seq. (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982) 89 I.D. 403

INDIANS

FISCAL AND FINANCIAL AFFAIRS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Rossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

GUARDIANSHIP

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

INDIVIDUAL INDIAN MONEY ACCOUNTS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.5, the approval of the Secretary of the Interior is required

INDIANS--Continued

INDIVIDUAL INDIAN MONEY ACCOUNTS--Continued

before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

SOCIAL WELFARE

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

TRUSTS

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

WELFARE

Under 5 U.S.C. § 552(a)(1) (1976) and the Supreme Court's holding in Morton v. Ruiz, 415 U.S. 199 (1974), an individual may not be deprived of benefits solely on the basis of an eligibility standard published only in the BIA manual.

Under the system established in the BIA manual, custodial care is part of the general assistance program, and an individual must first be found eligible for general assistance before he or she can be considered for custodial care assistance.

Under the provisions of the BIA manual, an individual is eligible for custodial care assistance even though the necessary care may be provided in the individual's home.

When, due to age, infirmity, or physical or mental impairment, an individual requires any type or amount of assistance in daily living, that person qualifies for custodial care under the provisions of 66 BIAM 5.10A.

Under 66 BIAM 5.10E(2), any continuing care arrangements necessary for an individual who has been in a custodial care institution must be prepared before that individual is discharged from the institution.

The decision to terminate custodial care for an individual must be documented as based upon physical or mental improvement, or upon an initial erroneous determination of the individual's condition.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

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INDIANS--Continued

WELFARE--Continued

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

LACHES

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

LACHES--Continued

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A *sine qua non* of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

MATERIALS ACT

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, *as amended*, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

Ukpeagvik Inupiat Corp., 68 IBLA 359 (Nov. 22, 1982)

MILLSITES

(*See also* Mining Claims--if included in this Index.)

GENERALLY

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling

MILLSITES--Continued

GENERALLY--Continued

purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith,
67 IBLA 225 (Sept. 23, 1982)

DEPENDENT

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia B. Beckley,
66 IBLA 357 (Aug. 27, 1982)

DETERMINATION OF VALIDITY

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia B. Beckley,
66 IBLA 357 (Aug. 27, 1982)

MILLSITES--Continued

DETERMINATION OF VALIDITY--Continued

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith,
67 IBLA 225 (Sept. 23, 1982)

PATENTS

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982)
89 I.D. 293

MINERAL LANDS

GENERALLY

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

DETERMINATION OF CHARACTER OF

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489 *as amended* by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

One will not be considered an innocent purchaser for value under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), when the evidence presented at a hearing supports a finding that the lands in question were of known mineral character on the date of the original sale by the railroad, and the purchaser should have known at the time of purchase that such lands were excepted from the grant to the railroad.

United States v. Southern Pacific Transportation Co. & Donald K. Lee, 66 IBLA 191 (Aug. 13, 1982)

Where 10-acre portions of oil shale placer mining claims cover lands from which erosion has removed the Parachute Creek member (the principal body of rich oil shale), there is no geological basis to infer the presence of rich oil shale, and such portions of the claims are properly determined to be nonmineral in character.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

LEASES

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

MINERAL RESERVATION

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

NONMINERAL ENTRIES

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

PROSPECTING PERMITS

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

GeoResources, Inc., 67 IBLA 297 (Sept. 29, 1982)

MINERAL LEASING ACT

(*See also* Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits--if included in this Index.)

GENERALLY

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given

MINERAL LEASING ACT--Continued

GENERALLY--Continued

tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp., et al., 63 IBLA 363 (Apr. 29, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later date.

Sunoco Energy Development Co., 65 IBLA 323 (July 15, 1982)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry B. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

The holder of an oil shale placer mining claim is required to perform $100 of annual assessment work each year for the benefit of such claim. Where there has not been "substantial compliance" with this requirement, such claim is forfeited to the United States. Resumption of work following a substantial breach of compliance does not bar the Government from asserting a forfeiture.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

A decision proposing a provision in a readjustment coal lease for suspension of continued operations upon the payment of advance royalty will not be reversed merely because it makes the terms and conditions of the payments the subject of a future agreement.

The Bureau of Land Management may properly include provisions requiring submission of new mining and exploration plans in a readjusted coal lease even though a mining plan has been approved, since new or revised plans may be needed for other mineable coalbeds or because rock conditions may require mining changes.

A provision in a readjusted coal lease requiring the lessee to conduct operations so as to avoid damage "to non-Federal lands in the vicinity of the leased lands," and "where practicable, to repair" such damage as does occur, subject to the approval of the lessor, is improper, unenforceable, and void.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, even though it contains no express provision for notification to the lessee, since any authorized use would be subject to the lease.

Under 30 U.S.C. § 187 (Supp. II, 1978), a coal lease must include a provision requiring twice-monthly payment of wages in the absence of a showing that compliance with the provision would place the lessee in violation of state law.

A readjusted coal lease may properly require that buildings and surface structures be painted in a color which conforms or blends with the natural color of the surrounding area in order to mitigate negative visual impacts in a nearby recreation area where the lessee fails to establish that compliance with the requirement is not infeasible.

Blackhawk Coal Co., 68 IBLA 96 (Oct. 26, 1982)

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, as amended, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

International Minerals & Chemical Corp., 69 IBLA 314 (Nov. 30, 1982)

Noranda Exploration, Inc., 69 IBLA 317 (Dec. 27, 1982)

The position that only companies actually operating common carrier railroads and their "alter egos" are prohibited from holding federal coal leases by sec. 2(c) of the Mineral Lands Leasing Act and the position that affiliates of such companies are also prohibited are both reasonable, judicially defensible constructions of an ambiguous provision of law. The legislative history of sec. 2(c) fails to answer clearly the question whether affiliates of railroad companies are included in or excluded from the coverage of sec. 2(c).

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

APPLICABILITY

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

CITIZENSHIP

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

James E. Chudnow, 67 IBLA 193 (Sept. 22, 1982)

COMBINED HYDROCARBON LEASES

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given

tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, *as amended* by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Juntheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

LANDS SUBJECT TO

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, *as amended*, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Bachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Co *Emery Energy, Inc.*, 66 IBLA 307 (Aug. 24, 1982)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

LANDS SUBJECT TO

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

MINERALS MANAGEMENT SERVICE

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

MINES AND MINING

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

MINING CLAIMS

(*See also* Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21,

MINING CLAIMS--Continued

GENERALLY--Continued

1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith,
67 IBLA 225 (Sept. 23, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

United States v. Weber Oil Co. et al., 68 IBLA 37
(Oct. 21, 1982) 89 I.D. 538

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

ABANDONMENT

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

William E. B. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory B. Harrington, 64 IBLA 331 (June 10, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

--Continued

MINING CLAIMS--Continued

ABANDONMENT--Continued

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Mildred McGee, 68 IBLA 292 (Nov. 19, 1982)

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Douglas K. Martin, 68 IBLA 322 (Nov. 19, 1982)

James A. Huff, Elizabeth M. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Esther B. Moore, 61 IBLA 391 (Feb. 18, 1982)

Ray B. Krebs, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas E. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Pauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Bass et al., 63 IBLA 1 (Mar. 25, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Barler, 64 IBLA 86 (May 12, 1982)

Norbert A. Morton, 64 IBLA 89 (May 12, 1982)

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

James Heldman, 65 IBLA 180 (June 29, 1982)

Joe Warren, Sr., et al., 65 IBLA 387 (July 23, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. The burden of proof of the intent to abandon rests upon the party who asserts it, and the proof must be clear and convincing. Where the evidence is persuasive that a notice of abandonment mistakenly described the wrong claim, and that the claimant thereafter remained in occupancy and possession for many years, there was neither an intent to abandon nor actual abandonment, and the erroneous notice may be repudiated.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed in insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Armin P. Kessler, 62 IBLA 224 (Mar. 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Barger, 63 IBLA 67 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald B. Bannon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively

MINING CLAIMS--Continued

ABANDONMENT--Continued

constitutes an abandonment of the mining claim by the owner.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

E. Del & Associates, 65 IBLA 170 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A *sine qua non* of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 24, 1982)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Donald Klein, Rozelle Klein, 66 IBLA 212 (Aug. 16, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Stanley Sims, 64 IBLA 257 (June 2, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajon Minerals, 64 IBLA 261 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invent the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Fawn Bupp, 65 IBLA 277 (July 12, 1982)

Manuel E. Hernandez, 65 IBLA 281 (July 12, 1982)

William B. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Peter Laczay, 65 IBLA 291 (July 13, 1982)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Herschel Knapp, 65 IBLA 314 (July 14, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Olive M. Stickland, 65 IBLA 363 (July 20, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Harvey A. Wolcott et al., 65 IBLA 369 (July 20, 1982)

Elaine Marianne McLevie, 67 IBLA 220 (Sept. 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Victor Hegstad, 66 IBLA 31 (July 23, 1982)

Where a mining claim was located in Nov. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (Aug. 10, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the *Federal Register* notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George E. Hocker et al., 66 IBLA 168 (Aug. 12, 1982)

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Glen W. Taylor, 67 IBLA 393 (Oct. 8, 1982)

Where a mining claim was located in Oct. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof in the proper BLM office, prior to Dec. 31

of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Roger Ferguson, Sybil B. Ferguson, 67 IBLA 284 (Sept. 29, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

F. A. Stacy, 68 IBLA 248 (Nov. 16, 1982)

Where a mining claim was located in Dec. 1979, and evidence of assessment work or a proper notice of intention to hold the claim was not filed both in the office where the claim is recorded and in the proper office of BLM on or before Dec. 30, 1980, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

R. Rigby Young, 68 IBLA 397 (Nov. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where a claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work or notice of intention to hold the claims, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Richard E. Reyes, 69 IBLA 44 (Nov. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

R. Rigby Young, 69 IBLA 88 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Asbestos Pipes, Inc., 69 IBLA 100 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Brent K. Young, 69 IBLA 131 (Dec. 8, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Klondex Gold & Silver Mining Co., 69 IBLA 247 (Dec. 20, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper BLM office within the time periods prescribed by statute consitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM May 14, 1979, but the service fee is not paid with a negotiable check until Dec. 20, 1979, the recordation date of the claims is Dec. 20, 1979. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is Dec. 20, 1979, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

ASSESSMENT WORK

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

If the owner of a mining claim located on or before Oct. 21, 1976, recorded his claim with BLM in 1977, he was required under 43 CFR 3833.2-1(a) to file a copy of evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30, 1978. Because this particular filing is not required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), a decision declaring such a claim abandoned and void for failure to file the required document will be reversed where the owner of the claim complied with the statutory filing requirements and subsequently filed the document required by the regulation.

W. Verne Kight, Eva M. Kight (On Reconsideration), 61 IBLA 216 (Jan. 28, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Donald E. Atkins, 61 IBLA 364 (Feb. 16, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory N. Harrington, 64 IBLA 331 (June 10, 1982)

Vernon J. Bell, 66 IBLA 171 (Aug. 12, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Slimco et al., 62 IBLA 260 (Mar. 15, 1982)

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Douglas E. Overman, 62 IBLA 397 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Bace et al., 63 IBLA 1 (Mar. 25, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Jack L. Kettler, 68 IBLA 301 (Nov. 19, 1982)

The mailing of evidence of annual assessment work after the due date does not constitute compliance with the requirements of the statute.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in a mining claim being declared abandoned and void.

Oregon Portland Cement Co., 66 IBLA 204 (Aug. 13, 1982)

The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

The holder of an oil shale placer mining claim is required to perform $100 of annual assessment work each year for the benefit of such claim. Where there has not been "substantial compliance" with this requirement, such claim is forfeited to the United States. Resumption of work following a substantial breach of compliance does not bar the Government from asserting a forfeiture.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

COMMON VARIETIES OF MINERALS

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

Special Value

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place or by reduced cost or overhead so that the profit to the claimant would be substantially more.

A deposit of slate and graywacke cannot be determined to be an uncommon variety of mineral solely on the basis of its accessibility or proximity to market (both factors of location), even though such factors may give the deposit a competitive advantage, as they are not unique properties inherent in the deposit but only extrinsic factors.

United States v. Sherman C. Smith, Larry L. Smith, 66 IBLA 182 (Aug. 13, 1982)

Unique Property

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place or by reduced cost or overhead so that the profit to the claimant would be substantially more.

A deposit of slate and graywacke cannot be determined to be an uncommon variety of mineral solely on the basis of its accessibility or proximity to market (both factors of location), even though such factors may give the deposit a competitive advantage, as they are not unique properties inherent in the deposit but only extrinsic factors.

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Unique Property--Continued

United States v. Sherman C. Smith, Larry L. Smith, 66 IBLA 182 (Aug. 13, 1982)

CONTESTS

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Ewalt, 62 IBLA 116 (Mar. 4, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 236 (Aug. 17, 1982)

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

When the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery.

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, *i.e.*, where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must

MINING CLAIMS--Continued

CONTESTS--Continued

appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael C. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Webor Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

An Administrative Law Judge in a mining contest may properly preclude testimony at a hearing on remand on issues of geology, quality, quantity, and continuity of ore, and technology of a proposed beneficiation process where findings on such issues have been made by the Judge at an earlier hearing and approved by the Board on appeal, and no offer of proof is submitted to the Board that would compel an altered finding.

Where the Board remands a Government contest for additional evidence needed to ascertain whether a mineral patent applicant has made a discovery, the burden of establishing a prima facie case is properly assigned to the Government.

MINING CLAIMS--Continued

CONTESTS--Continued

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

DETERMINATION OF VALIDITY

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

When the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery.

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

Lack of development alone may support a finding of invalidity, unless there is direct evidence in the record that the material from the mine is marketable, i.e., that the mineral can be mined, removed, and marketed at a profit.

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

The validity of a mining claim cannot depend on the inference of richer ore or wider veins than those which are already physically exposed.

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert F. Lara, 67 IBLA 48 (Sept. 9, 1982)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith,
67 IBLA 225 (Sept. 23, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of

rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

The Department is not barred by the equitable doctrines of laches or waiver from declaring oil shale placer mining claims null and void, since, until patent issues, it has the power and duty to invalidate adverse interests in public lands as required by governing laws.

United States v. Weber Oil Co. et al., 68 IBLA 37
(Oct. 21, 1982) 89 I.D. 538

Occasional assays of material from a mining claim showing high values of gold are not conclusive evidence of a qualifying discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

A distinction is properly recognized between a "valuable mineral" and a "valuable mineral deposit." To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode and the mere showing of disconnected pods of mineral concentration, even of high values, does not suffice by itself.

United States v. Slater A. Judd, Jr., 68 IBLA 137
(Oct. 29, 1982)

Owners of unpatented mining claims located within tracts conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act held not to be entitled to a Departmental adjudication of the validity of their claims prior to conveyance.

Edward D. Moore, Van Moore, A. L. Anderson, 68 IBLA 174
(Nov. 4, 1982)

An Administrative Law Judge in a mining contest may properly preclude testimony at a hearing on remand on issues of geology, quality, quantity, and continuity of ore, and technology of a proposed beneficiation process where findings on such issues have been made by the Judge at an earlier hearing and approved by the Board on appeal, and no offer of proof is submitted to the Board that would compel an altered finding.

Where the Board remands a Government contest for additional evidence needed to ascertain whether a mineral patent applicant has made a discovery, the burden of establishing a prima facie case is properly assigned to the Government.

United States v. Pittsburgh Pacific Co., 68 IBLA 342
(Nov. 22, 1982) 89 I.D. 586

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

Theodore J. Almasy, 69 IBLA 160 (Dec. 13, 1982)
89 I.D. 618

MINING CLAIMS--Continued

DISCOVERY

Generally

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met generally where it appears that mineralization on the claim has been physically exposed and evidence shows the mineral deposit is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

United States v. Kaycee Bentonite Corp., et al., 64 IBLA 183 (May 27, 1982)
89 I.D. 262

Where a qualified mineral examiner testifies that he examined and took samples from the only exposed areas on contested mining claims, that his examination and the assay of those samples revealed no mineralization, and that he was of the opinion that a prudent person would not spend time, effort, and money believing he had a reasonable prospect of developing a valuable mine, a prima facie case of invalidity of the claims is established. Where the claimant submits unverified reports of mineralization and testifies that little work and no sampling have been done on the claims since he restaked them, the prima facie showing is not rebutted, and the claims are properly declared invalid.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

Lack of development alone may support a finding of invalidity, unless there is direct evidence in the record that the material from the mine is marketable, i.e., that the mineral can be mined, removed, and marketed at a profit.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Occasional assays of material from a mining claim showing high values of gold are not conclusive evidence of a qualifying discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

A distinction is properly recognized between a "valuable mineral" and a "valuable mineral deposit." To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode and the mere showing of disconnected pods of mineral concentration, even of high values, does not suffice by itself.

United States v. Slater A. Judd, Jr., 68 IBLA 137 (Oct. 29, 1982)

Geologic Inference

The validity of a mining claim cannot depend on the inference of richer ore or wider veins than those which are already physically exposed.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Marketability

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

Although a favorable showing of actual sales may demonstrate marketability, lack of sales is not necessarily conclusive on the issue of marketability. Lack of sales may be overcome, after all the evidence is heard, by a preponderance of the evidence showing that a prudent person could have extracted and marketed the mineral profitably.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

MINING CLAIMS--Continued

HEARINGS--Continued

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, i.e., where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

LANDS SUBJECT TO

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ralph Mossott, 61 IBLA 116 (Jan. 6, 1982)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert N. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

J & B Mining Co., Inc., 69 IBLA 73 (Nov. 30, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Donald W. Bass, 67 IBLA 32 (Sept. 7, 1982)

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

The lands underlying a nonnavigable lake are not available for the location of mining claims where the uplands have been patented without reservation of minerals to the United States or where the uplands in the public domain have been appropriated.

Lawrence E. Baum et al., 67 IBLA 239 (Sept. 24, 1982)

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1976), because the minerals are not owned by the United States. Such a claim is properly declared null and void, regardless of whether or not a claimant performed assessment work or paid taxes on the land.

John E. Craig, Helen V. Craig, 68 IBLA 11 (Oct. 18, 1982)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

R. J. Wall, 68 IBLA 122 (Oct. 27, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Mining claims are properly declared null and void ab initio when they are located on land which, on the date of location, was included in an application for withdrawal from appropriation under the public land laws, including the mining laws and the mineral leasing laws.

Louise Woodall, 69 IBLA 108 (Nov. 30, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims are null and void ab initio.

Charles Degitz, 69 IBLA 145 (Dec. 9, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Lester M. Holt, 69 IBLA 180 (Dec. 15, 1982)

LOCATABILITY OF MINERAL

Generally

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

LOCATION

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

MINING CLAIMS--Continued

LOCATION--Continued

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

Where a mining claimant seeks to amend various mining claims, there must be some way to ascertain which claims, in fact, are being amended. Where it is impossible to identify specific claims with specific amendments, the amendment can be of no force or effect.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald E. Bannon, 63 IBLA 115 (Apr. 2, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

MINING CLAIMS--Continued

LOCATION--Continued

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Failure to comply with state and local regulations requiring oil shale placer mining claims to be marked on the ground does not invalidate the claims when the claims were located before Feb. 25, 1920, in compliance with contemporary Departmental regulations.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

"Date of location." Under Colorado State law, as applied by 43 CFR 3833.0-5(h), the date of location of an unpatented mining claim in Colorado is the date specified in the location certificate. Where the claimant fails to file a copy of the official record of the notice of location of this claim with BLM within 90 days of this date, BLM properly rejects the filing, notwithstanding allegations that the actual date of location was different than the date specified in the location certificate.

Amigo Mining, Inc., 68 IBLA 305 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

R. Rigby Young, 69 IBLA 88 (Nov. 30, 1982)

MINING CLAIMS--Continued

LOCATION--Continued

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

MARKETABILITY

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

The Department contested the validity of four unpatented limestone placer mining claims and the associated millsite contending the limestone from the claims was unmarketable. Following the hearing, the Administrative Law Judge correctly declared the claims null and void where the evidence established the material from the claims could not have been marketed at a profit.

United States v. Estate of Mildred Buck & Cleo Wisser, 69 IBLA 19 (Nov. 24, 1982)

MILLSITES

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

MINERAL LANDS

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

Where 10-acre portions of oil shale placer mining claims cover lands from which erosion has removed the Parachute Creek member (the principal body of rich oil shale), there is no geological basis to infer the presence of rich oil shale, and such portions of the claims are properly determined to be nonmineral in character.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

PATENT

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

PATENT--Continued

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

The provisions of 30 U.S.C. §§ 29 and 30 (1976) relating to "adverse claims" refers only to adverse mineral claims, and nothing in these sections purports to limit the rights of third parties to appeal from a denial of a protest of a patent application where they can show a cognizable interest which has been adversely affected.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

An Administrative Law Judge in a mining contest may properly preclude testimony at a hearing on remand on issues of geology, quality, quantity, and continuity of ore, and technology of a proposed beneficiation process where findings on such issues have been made by the Judge at an earlier hearing and approved by the Board on appeal, and no offer of proof is submitted to the Board that would compel an altered finding.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

Theodore J. Almasy, 69 IBLA 160 (Dec. 13, 1982) 89 I.D. 618

PLACER CLAIMS

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction

MINING CLAIMS--Continued

PLACER CLAIMS--Continued

profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

POWERSITE LANDS

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

RECORDATION

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Nonesuch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William H. R. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Ned Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver E. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Divy Divnick, Floyd Vipond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

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MINING CLAIMS--Continued

RECORDATION--Continued

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald B. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Massie, 64 IBLA 137 (May 20, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

James R. Morgan, 67 IBLA 223 (Sept. 23, 1982)

Sidney A. Webb, 69 IBLA 202 (Dec. 16, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Ray M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Morton, 64 IBLA 89 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location *and* either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Armin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive B. Stirland, 65 IBLA 363 (July 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald D. Bannon, 63 IBLA 115 (Apr. 2, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Corner, 63 IBLA 129 (Apr. 5, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambrix, 63 IBLA 170 (Apr. 8, 1982)

Cruz M. Chavez, 67 IBLA 270 (Sept. 27, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Rebney III, 63 IBLA 231 (Apr. 16, 1982)

B. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

Where a mining claimant has been excused from the performance of annual assessment work on claims within a unit of the National Park Service, notice of intention to hold claims must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed under the provisions of sec. 314 of the Federal Land Policy and Management Act of 1976. Depositing a document in the mails does not constitute filing.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Verchota, 64 IBLA 23 (May 6, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the

MINING CLAIMS--Continued

RECORDATION--Continued

BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

R. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Hukala, 64 IBLA 313 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Raymond L. Dinwiddie, 64 IBLA 334 (June 10, 1982)

Don Moon, 68 IBLA 211 (Nov. 10, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Steve Kosanke, 66 IBLA 46 (July 27, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

H. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

Gregory A. Voetsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM on Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Paul Burr, 65 IBLA 277 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Elmer Transtrum, 65 IBLA 285 (July 13, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Robert A. Sandstedt, Priley Stenveld, 65 IBLA 367 (July 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

James T. Hackworth, 66 IBLA 132 (Aug. 10, 1982)

Carolyn C. Crawford, H. Max Chenault, 68 IBLA 19 (Oct. 19, 1982)

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Don Tow, 68 IBLA 213 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Geoffrey L. Warren, 66 IBLA 165 (Aug. 11, 1982)

A. L. Stutenroth, 67 IBLA 6 (Sept. 1, 1982)

Orville H. Williams, Helen C. Williams, 69 IBLA 270 (Dec. 21, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the *Federal Register* notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George D. Booker et al., 66 IBLA 168 (Aug. 12, 1982)

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Iverson J. Bell, 66 IBLA 171 (Aug. 12, 1982)

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Carl Eichenhofer, 66 IBLA 226 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Wade McNeil, Flora McNeil, 66 IBLA 228 (Aug. 16, 1982)

Lawrence Nordstrom, 67 IBLA 390 (Oct. 12, 1982)

James J. McFarlane, 68 IBLA 24 (Oct. 21, 1982)

Robert F. Thompson, 68 IBLA 120 (Oct. 26, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Alan T. Trego, James L. Barnes, 66 IBLA 338 (Aug. 26, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. D. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Apr. 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

James R. Brayman, 67 IBLA 138 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Sec. 314 of the Federal Land Policy and Management Act of 1976 and 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. Failure to file the required instrument within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Robert Brennan, 67 IBLA 218 (Sept. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

John Andrew Batok, 67 IBLA 272 (Sept. 28, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of every year thereafter he must file an affidavit of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequences must be borne by the claimant.

Carl H. Quandt, 67 IBLA 355 (Oct. 6, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Robert J. Haby et al., 67 IBLA 370 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 20, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM and the accompanying check for the filing fees is dishonored by the bank, the uncollectable check constitutes nonpayment of the filing fees.

Glen W. Taylor, 67 IBLA 393 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed the consequences must be borne by the claimant.

Jack L. Wooley, 68 IBLA 13 (Oct. 18, 1982)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a copy of the notice of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

F. F. Davenport, 68 IBLA 198 (Nov. 9, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM district office in Susanville, California, on Dec. 31, 1981, he has not complied with 43 CFR 3833.2-1. The instrument was submitted to the district office after the statutory period for such filings had expired. Further, the district office was not the "proper BLM office" in which to file such a document. The proper office is the BLM California State Office in Sacramento, California, as expressly provided in 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

John Lovelady, 68 IBLA 245 (Nov. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each calendar year following. There is no provision for waiver of this mandatory requirement, and where

evidence of assessment work is not filed timely, the consequences must be borne by the claimant.

Loyd B. Colay, 68 IBLA 260 (Nov. 16, 1982)

Russell E. Journigan, 69 IBLA 52 (Nov. 29, 1982)

Where mining claims were located between July 1960 and August 1966, and evidence of assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Mildred McGee, 68 IBLA 292 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of the calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Arden P. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Where mining claims were located in Mar. 1967 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

Douglas K. Martin, 68 IBLA 322 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely

MINING CLAIMS--Continued

RECORDATION--Continued

filed, for any reason, the consequence must be borne by the claimant.

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file *within 90 days* after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

R. Rigby Young, 69 IBLA 88 (Nov. 30, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims are submitted to BLM for recordation on Oct. 9, 1979, and the service fee therefor is not paid to BLM until Dec. 10, 1979, the recordation date of the notices is Dec. 10, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper office of BLM on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Location notices relating to unpatented mining claims located before Oct. 21, 1976, for which the service fees were not paid to BLM by a negotiable check until Dec. 10, 1979, are not timely filed, and the claims are properly declared abandoned and void.

Maud H. Goehring Conway, Lewis Conway, 69 IBLA 91 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file, with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter, a copy of the evidence of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the statutory consequence must be borne by the claimant as set forth in 43 U.S.C. § 1744(c) (1976).

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the

MINING CLAIMS--Continued

RECORDATION--Continued

Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gold Depository & Loan Co., Inc. v. Gary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the location notice or evidence of assessment work is not timely filed, the claim is properly declared abandoned.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, for any reason, the statutory consequence must be borne by the claimant.

Elton P. Mascari, 69 IBLA 273 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for any reason, the consequence must be borne by the claimant.

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

RELOCATION

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the

MINING CLAIMS--Continued

RELOCATION--Continued

claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" *does* relate back to the date of the filing of the original notice of location, so that the filer *does* receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Ponesjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Barr, Sr., 65 IBLA 167 (June 29, 1982)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

MINING CLAIMS--Continued

RELOCATION--Continued

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. B. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

R. J. Hall, 68 IBLA 122 (Oct. 27, 1982)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

Coates-Lahssen, 69 IBLA 137 (Dec. 9, 1982)

Where there are factual questions arising from affidavits presented by appellant relating to whether a filing subsequent to a withdrawal was in the nature of an "amended location," the matter will be referred for further investigation allowing the claimant reasonable time in which to show that the subsequent filing is an amended location, and that he is the successor in an unbroken chain of title dating back to the original location.

Charles Desitz, 69 IBLA 145 (Dec. 9, 1982)

SPECIFIC MINERAL(S) INVOLVED

Clay

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

United States v. Kaycee Bentonite Corp., et al., 64 IBLA 183 (May 27, 1982)
89 I.D. 262

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED--Continued

Gold

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

SURFACE USES

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land

MINING CLAIMS--Continued

SURFACE USES--Continued

withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

WITHDRAWN LAND

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert B. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Elmer G. Thomas et al., 66 IBLA 92 (July 30, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

J & B Mining Co., Inc., 69 IBLA 73 (Nov. 30, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Donald W. Bass, 67 IBLA 32 (Sept. 7, 1982)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Maurice Duval, Marianne Duval, 68 IBLA 1 (Oct. 12, 1982)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

R. J. Wall, 68 IBLA 122 (Oct. 27, 1982)

Mining claims are properly declared null and void ab initio when they are located on land which, on the date of location, was included in an application for withdrawal from appropriation under the public land laws, including the mining laws and the mineral leasing laws.

Louise Woodall, 69 IBLA 108 (Nov. 30, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Where mining claims were originally located on land which was withdrawn from mineral location, the claims are null and void ab initio.

Where there are factual questions arising from affidavits presented by appellant relating to whether a filing subsequent to a withdrawal was in the nature of an "amended location," the matter will be referred for further investigation allowing the claimant reasonable time in which to show that the subsequent filing is an amended location, and that he is the successor in an unbroken chain of title dating back to the original location.

Charles Degitz, 69 IBLA 145 (Dec. 9, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Lester M. Holt, 69 IBLA 180 (Dec. 15, 1982)

MINING CLAIMS RIGHTS RESTORATION ACT

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

MINING OCCUPANCY ACT

GENERALLY

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, *as amended*, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

PRINCIPAL PLACE OF RESIDENCE

The Mining Claims Occupancy Act, 30 U.S.C. § 701 (1976), only requires that valuable improvements on an unpatented mining claim constitute *a* principal place of residence for a qualified applicant, not that such be *the* principal place of residence of the applicant.

Jack J. and LaVonn Curtis, 63 IBLA 306 (Apr. 26, 1982)

MISTAKES

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

MISTAKES--Continued

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
(See also Environmental Policy Act--if included in this Index.)

ENVIRONMENTAL STATEMENTS

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

Dolores B. Lisman, 67 IBLA 72 (Sept. 10, 1982)

NATIONAL PARK SERVICE

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

B. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

NATIONAL PARK SERVICE AREAS

GENERALLY

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the lands applied for are not withdrawn from operation of the Mineral Leasing Act. An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

Le Ann T. Garth, 69 IBLA 79 (Nov. 30, 1982)

Frances Kunkel, 69 IBLA 205 (Dec. 16, 1982)

LAND

Mining

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or

NATIONAL PARK SERVICE AREAS--Continued

LAND--Continued

Mining--Continued

withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

NAVIGABLE WATERS

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

NOTICE

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy H. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ebbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles I. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

NOTICE--Continued

GENERALLY--Continued

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Warren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Robert J. Maby et al., 67 IBLA 370 (Oct. 8, 1982)

Gregory A. Voetsch, Sr., 69 IBLA 124 (Dec. 6, 1982)

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

NOTICE--Continued

GENERALLY--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Emery Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the case to BLM so that his offer may be considered with priority as of that time.

James B. Chudnow, 68 IBLA 87 (Oct. 22, 1982)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, and are not entitled to rely on interpretations thereof used in another state office.

Pan P. Tzeng, 68 IBLA 381 (Nov. 23, 1982)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Frank C. Lytle, III, 69 IBLA 210 (Dec. 16, 1982)

OIL AND GAS LEASES
(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)

GENERALLY

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur B. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur B. Frank, 61 IBLA 202 (Jan. 26, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSDJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Fiskles, 63 IBLA 81 (Mar. 30, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Myles, 64 IBLA 339 (June 10, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Oil and gas leases may be acquired and held only by citizens of the United States, associations of citizens (including partnerships), corporations, and municipalities. The Mineral Leasing Act does not prohibit the creation of joint tenancies when oil and gas leases are issued. Where the two offerors are designated on a competitive oil and gas lease bid as "Turner C. Smith, Jr. and Signe D. Smith, husband and wife, as Joint Tenants, DBA Turner Smith & Associates" and the bid is signed by each person individually, the bid is acceptable in that form since it is possible to determine the full names of the offerors.

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element in determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe D. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

L. B. Blake, 67 IBLA 103 (Sept. 15, 1982)

The provisions of 43 CFR 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Alvin B. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

Ida Lee Anderson, John R. Anderson, 67 IBLA 340 (Oct. 5, 1982)

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Mary R. Gonzales, 67 IBLA 351 (Oct. 5, 1982)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

Ted C. Findeiss, 68 IBLA 167 (Oct. 29, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. Rejection of an offer is proper where the record demonstrates leasing might adversely affect sensitive biological species in the Algodones Dunes Outstanding Natural Area.

Eagle Exploration Co., 69 IBLA 96 (Nov. 30, 1982)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square or within an area not exceeding six surveyed sections in length or width is defective and must be rejected.

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

The provisions of 43 CFR 3102.2-1, 3102.2-4, and 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Westates Group No. 8, 69 IBLA 186 (Dec. 15, 1982)

ACQUIRED LANDS LEASES

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcoex, Inc., 68 IBLA 130 (Oct. 28, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Bachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Emery Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

R. L. Mulholland, 67 IBLA 14 (Sept. 3, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, an acquired lands oil and gas lease offer using such a description must be accompanied by a map clearly marked showing the location of the requested lands or the offer will be rejected.

Tester Songer, 69 IBLA 177 (Dec. 15, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, *as amended*, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An offer to lease acquired lands for oil and gas which cannot be embraced within a 6-mile square or within an area not exceeding six surveyed sections is defective and unless the exception expressed in 43 CFR 3110.1-3(b) applies, should be rejected.

Jester Songer, 69 IBLA 296 (Dec. 23, 1982)

ACREAGE LIMITATIONS

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

APPLICATIONS

Generally

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcoex, Inc., 68 IBLA 130 (Oct. 28, 1982)

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Wood, 61 IBLA 213 (Jan. 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in *Lola I. Doe*, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlie D. Haas, 61 IBLA 338 (Feb. 10, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William E. Burruss, 62 IBLA 40 (Feb. 24, 1982)

--Continued

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Jack T. Thompson, 66 IBLA 273 (Aug. 17, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack M. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

When land has previously been included in a lease that has terminated, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system under 43 CFR 3112.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Raymond F. Joeckel, 68 IBLA 195 (Nov. 9, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert E. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 303 (July 20, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Rood, 62 IBLA 391 (Mar. 24, 1982)

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James B. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sossini, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

Nellie E. Colley, 68 IBLA 16 (Oct. 19, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regisbal, 64 IBLA 170 (May 26, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles I. Reff, 64 IBLA 234 (May 27, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co., et al., 64 IBLA 247 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettigrew, 64 IBLA 336 (June 10, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in *Lola I. Doe*, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 24, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard R. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

Bachalk Production, Inc., 65 IBLA 271 (July 12, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (*i.e.*, one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

John F. Jacobs, 66 IBLA 219 (Aug. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered. An incomplete application must be rejected.

Franz S. Stieglmayr, 66 IBLA 276 (Aug. 18, 1982)

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

An oil and gas lease application, form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Carol V. Miller, 66 IBLA 394 (Aug. 31, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hercules (A Partnership) and Gemini (A Partnership), 67 IBLA 151 (Sept. 20, 1982)

Dry River Properties, 69 IBLA 151 (Dec. 13, 1982)

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alber, 67 IBLA 214 (Sept. 23, 1982)

A simultaneous oil and gas lease application which is not signed in the space provided on the card must be rejected.

Wilfred Plomis, 67 IBLA 237 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

Alvin D. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, *e.g.*, where leasing might adversely affect relict plant communities and the suitability of the West Potrillo Mountains as habitat for pronghorn antelope.

James H. Chudnow, John L. Messinger, 68 IBLA 128 (Oct. 28, 1982)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Duane W. Dohse, 68 IBLA 240 (Nov. 16, 1982)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror incorrectly alleges that the senior offeror had not identified the proper county in describing the land.

Irvin Wall, 68 IBLA 243 (Nov. 16, 1982)

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

Irvin Wall, 69 IBLA 175 (Dec. 14, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Herbert I. Ott, 68 IBLA 336 (Nov. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A defective application for noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive offer to lease for oil and gas and does not create a property right in the offeror.

Pen P. Tseng, 68 IBLA 381 (Nov. 23, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Jack Goodwin, 68 IBLA 400 (Nov. 23, 1982)

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by an offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer if the corporate president serves in a dual capacity as treasurer and the president's identity is disclosed on the list.

Reference to the serial number identifying the corporate qualifications file of a corporate offeror for an oil and gas lease constitutes certification that the qualifications statement complies with 43 CFR 3102.2-1(b) (1980).

Paul H. Temple, 69 IBLA 54 (Nov. 29, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the lands applied for are not withdrawn from operation of the Mineral Leasing Act. An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

De Ann T. Gaeth, 69 IBLA 79 (Nov. 30, 1982)

Frances Kunkel, 69 IBLA 205 (Dec. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. Rejection of an offer is proper where the record demonstrates leasing might adversely affect sensitive biological species in the Algodones Dunes Outstanding Natural Area.

Eagle Exploration Co., 69 IBLA 96 (Nov. 30, 1982)

Where a simultaneous oil and gas lease applicant establishes that he had, in fact, personally signed his application and his offer, as required by 43 CFR 3112.2-1(b) and 43 CFR 3112.4-1, his offer was rejected improperly.

Paul Mirialakis, 69 IBLA 121 (Dec. 3, 1982)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square or within an area not exceeding six surveyed sections in length or width is defective and must be rejected.

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

A noncompetitive oil and gas lease offer is properly rejected in favor of a senior offer that would qualify regardless of whether it was adjudicated on the basis of the rules applicable at the time it was filed or at the time the lease was issued.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Paiute Oil & Mining Corp., 69 IBLA 172 (Dec. 14, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

KVK Partnership, 69 IBLA 199 (Dec. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

Robert D. Lee, 69 IBLA 255 (Dec. 21, 1982)

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by the offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer or secretary if these offices are held by other corporate officers serving in a dual capacity and the identity of these corporate officers is disclosed by the list.

References to the serial number identifying the corporate qualifications file of a corporate offeror for an oil and gas lease constitutes certification that the qualifications statement complies with 43 CFR 3102.2-1(b) (1980).

An over-the-counter offer to lease oil and gas is not subject to rejection by the fact that the signatures of three offerors appear on the face of the offer accompanied by only a single entry showing the date of execution of the offer.

Paul E. Temple, 69 IBLA 275 (Dec. 21, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, *as amended*, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where it is not accompanied either by partnership qualification papers, as required by 43 CFR 3102.2-4, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c).

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application filed for such land must be rejected. Even if the outstanding lease were canceled, the land would not be available for over-the-counter leasing, since land within a canceled lease may be leased again only in compliance with the drawing procedure established by 43 CFR 3112.

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

Irvin Wall, 69 IBLA 321 (Dec. 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Amendments

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final Departmental decision, but with priority of filing only as of the date the corrective information was filed.

John L. Messinger, James H. Chudnow, 65 IBLA 20 (June 21, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

Robert B. Lee, 69 IBLA 255 (Dec. 21, 1982)

Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert M. Winston, 61 IBLA 199 (Jan. 26, 1982)

David D. Perry, 67 IBLA 171 (Sept. 21, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Wood, 61 IBLA 213 (Jan. 28, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack M. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert E. Andahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSDJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred N. Sonsini, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles I. Neff, 64 IBLA 234 (May 27, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Where an oil and gas lease application is filed through a leasing service in the BLM simultaneous filing program bearing a serial number as an ostensible reference to a leasing service's qualifications, and there is no compliance with the requirements set forth in 43 CFR 3102.2-6(b), the application is properly rejected.

Marjorie E. Woodward, 65 IBLA 138 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard B. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

An application for oil and gas lease filed in the simultaneous leasing program signed on behalf of the applicant by an agent using only her surname was adequate compliance under the regulations in effect in Nov. 1981.

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

Fred E. Garrett (Appellant), Robert B. Deffenbaugh (Respondent), 66 IBLA 42 (July 26, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elisabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing a simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

Cliff Mezey (On Reconsideration), 66 IBLA 178 (Aug. 12, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered. An incomplete application must be rejected.

Franz S. Stieglmayr, 66 IBLA 276 (Aug. 18, 1982)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

The Board will affirm a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first-drawn applicant did comply.

Marilyn S. Watson, 67 IBLA 67 (Sept. 10, 1982)

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

Raymond K. Steitz, 67 IBLA 173 (Sept. 21, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Under 43 CFR 3102.2-1(c), the necessary information required by 43 CFR 3102.2-6 for agents acting on behalf of simultaneous oil and gas lease applicants may be filed in any Bureau of Land Management office. Upon acceptance of the filing by the Bureau of Land Management and assignment of a serial number, the serial number may be referenced on future oil and gas lease applications filed with any Bureau of Land Management office in lieu of resubmitting the information.

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

Alvin B. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3111.2-1(b) where the space for the agent's signature contains the handwritten names of the corporation and the person signing on behalf of the corporation.

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Duane W. Dobbs, 68 IBLA 240 (Nov. 16, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

William E. Monk, 68 IBLA 339 (Nov. 22, 1982)

An oil and gas lease application signed by anyone other than the applicant must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Even if an agent's signature is not clearly legible, the regulatory requirement is satisfied if the application form refers to a qualifications file which clearly identifies the agent signing the card.

Liberty Petroleum Corp., 68 IBLA 387 (Nov. 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

Mrs. G. C. Fajardo, 69 IBLA 70 (Nov. 30, 1982)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only three initials and the name of the corporation, and the application is properly rejected.

Paulette M. Brambear, 69 IBLA 169 (Dec. 13, 1982)

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c) (1981), had to be limited in duration to less than 2 years.

Westates Group No. 8, 69 IBLA 186 (Dec. 15, 1982)

A simultaneous oil and gas lease applicant complies with 43 CFR 3112.2-1(b), where the space for the agent's signature contains the initials of the filing service and the holographically signed last name of the authorized agent of the filing service.

Linda R. Bluskin, 69 IBLA 214 (Dec. 16, 1982)

Description

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Papulak, 63 IBLA 16 (Mar. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where BLM issues an oil and gas lease pursuant to an oil and gas lease offer which includes a land description which meets the requirements of 43 CFR 3101.1-4(a), the offer is not defective and BLM may properly reject a subsequent offer for the leased lands.

Irwin Wall, 66 IBLA 130 (Aug. 10, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

James M. Chudnow, John L. Messinger, 68 IBLA 228 (Nov. 15, 1982)

James M. Chudnow, John L. Messinger, 69 IBLA 157 (Dec. 13, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

An oil and gas lease issued under the Mineral Leasing Act of 1920 does not include the oil and gas deposits underlying a railroad right-of-way, which crosses the leased tract, even though the lease does not expressly except such deposits from its coverage.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "BSFW and FWS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James W. Chudnow, John L. Hessinger, 68 IBLA 181 (Nov. 8, 1982)

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

Irvin Hall, 68 IBLA 308 (Nov. 19, 1982)

Oil and gas lease offers for surveyed lands must describe the lands by legal subdivision, section, township, and range. Indication of the county where the described land lies is an added convenience found on the offer form, and erroneous indication of the county does not render a land description fatally defective.

Irvin Hall, 68 IBLA 311 (Nov. 19, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

When an oil and gas lease offer for lands within a section includes numbered fractional lot descriptions not found in the official survey plat and the specific description for that particular section is followed by an "all" in parenthesis, the description does not meet the requirements of 43 CFR 3101.1-4(a) where the acreage computation would be incorrect if the entire section was included. The offer is ambiguous and defective as to those fractional lots and subject to rejection to that extent.

James W. Chudnow, Theo V. Coukoulis, Georgette B. Coukoulis, 68 IBLA 377 (Nov. 22, 1982)

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

Dayton F. Hale, 69 IBLA 167 (Dec. 13, 1982)

Drawings

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur R. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur R. Frank, 61 IBLA 202 (Jan. 26, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Doris C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul N. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Richard N. Sporcic, 62 IBLA 159 (Mar. 8, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

Raymond B. Joeckel, 68 IBLA 195 (Nov. 9, 1982)

The language in 43 CFR 3112.6-1(c)(4), which prohibits separate filings by a trustee on behalf of two or more beneficiaries on the same parcel, is a per se prohibition and means that a trustee for two or more discrete trusts may file application on behalf of only one trust for any one parcel.

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents to the sibling survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease applications by more than one such trust for the same parcel is therefore violative of 43 CFR 3112.6-1(c), which prohibits the filing of multiple offers.

Bruce A. Blakemore (Estate Trust) and James B. Blakemore (Trust), 62 IBLA 336 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSBJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where individuals who are officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, and where the corporation has filed no applications, cancellation by BLM of leases awarded to such individuals pursuant to those drawings is improper when the individuals establish that there was no breach of their fiduciary duty to the corporation creating a corporate interest in the individual applications.

Where individual officers and/or directors of a corporation file noncompetitive oil and gar lease applications for the same parcels in the same drawings, but the corporation has not filed any applications, rejection of the applications by BLM is improper when the individuals establish that there was corporate authorization for such individual filings; that any prior assignments to the corporation of Federal oil and gas leases previously acquired through the simultaneous system were motivated by personal financial and business considerations, rather than by corporate obligation; and that no arrangement, agreement, scheme, or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

plan giving the corporation an interest in any of the applications ever existed.

Lawrence C. Harris et al., 63 IBLA 132 (Apr. 5, 1982)
89 I.D. 105

An applicant for a simultaneously filed oil and gas lease is bound to conform to changes in application procedures duly promulgated by publication in the *Federal Register* and referred to in appropriate notices prior to the filing; and the fact that numerous applications were required to be returned to the applicant and to others because they were on the wrong form does not render the drawing invalid as to the remaining applicants.

Ronald C. Agel, 64 IBLA 1 (May 3, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

R. W. Roberts, 69 IBLA 76 (Nov. 30, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 28, 1982)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

Richland Resources, 66 IBLA 68 (July 29, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren R. Haas, 66 IBLA 107 (Aug. 4, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

the offer of the first-qualified applicant, one who has fully complied with all the regulations.

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Pursuant to 43 CFR 3112.2-1(b), an application not signed by the applicant must bear the holographic signature of the agent. In the case of a corporate agent, this requires the signature of the person signing on behalf of the corporation.

Dennis R. Joy, 66 IBLA 260 (Aug. 17, 1982)

An oil and gas lease application, form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Carol V. Miller, 66 IBLA 394 (Aug. 31, 1982)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hercules (A Partnership) and Gemini (A Partnership), 67 IBLA 151 (Sept. 20, 1982)

Dry River Properties, 69 IBLA 151 (Dec. 13, 1982)

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application which is not signed in the space provided on the card must be rejected.

Wilfred Plomis, 67 IBLA 237 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Where, for purposes of reselection, it is necessary for an applicant whose original oil and gas lease application was erroneously omitted from a previous drawing to file a new application, such newly prepared application is not defective because it is not dated within the original filing period.

J. Linda Torres, 68 IBLA 5 (Oct. 12, 1982)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered and applicant's failure to check these items on the form cannot be cured where the rights of the second-drawn applicant have intervened.

Leonard Stegman, 68 IBLA 364 (Nov. 22, 1982)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A defective application for noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

Pan P. Yeung, 68 IBLA 381 (Nov. 23, 1982)

An oil and gas lease application signed by anyone other than the applicant must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Even if an agent's signature is not clearly legible, the regulatory requirement is satisfied if the application form refers to a qualifications file which clearly identifies the agent signing the card.

Liberty Petroleum Corp., 68 IBLA 387 (Nov. 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Jack Goodwin, 68 IBLA 400 (Nov. 23, 1982)

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

E. E. French, 69 IBLA 66 (Nov. 30, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

KVK Partnership, 69 IBLA 199 (Dec. 15, 1982)

Where a potential oil and gas lease applicant that has filed a statement of partnership qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-4, the application must be rejected as incomplete.

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Ellis R. Ferguson, 69 IBLA 352 (Dec. 30, 1982)

Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Herbert H. Winston, 61 IBLA 199 (Jan. 26, 1982)

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

H. W. Roberts, 69 IBLA 76 (Nov. 30, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlia C. Haas, 61 IBLA 338 (Feb. 10, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William B. Burrows, 62 IBLA 40 (Feb. 24, 1982)

Jack T. Thompson, 66 IBLA 273 (Aug. 17, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land

Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Robert B. Amdahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Pinkley, 63 IBLA 81 (Mar. 30, 1982)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert M. Myers, 63 IBLA 100 (Mar. 31, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

Milco Properties, Inc., 68 IBLA 215 (Nov. 10, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sonsini, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

Nellie E. Colley, 68 IBLA 16 (Oct. 19, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard E. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

Richland Resources, 66 IBLA 68 (July 29, 1982)

Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicants.

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren R. Hass, 66 IBLA 107 (Aug. 4, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (i.e., one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature,"

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing a simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

Cliff Hegey (On Reconsideration), 66 IBLA 178 (Aug. 12, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

Brian D. Haas, 66 IBLA 353 (Aug. 27, 1982)

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

The Board will affirm a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first-drawn applicant did comply.

Marilyn S. Watson, 67 IBLA 67 (Sept. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

Raymond E. Steitz, 67 IBLA 173 (Sept. 21, 1982)

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

James H. Chudnow, 67 IBLA 193 (Sept. 22, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

The provisions of 43 CFR 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Alvin H. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3111.2-1(b) where the space for the agent's signature contains the handwritten names of the corporation and the person signing on behalf of the corporation.

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Duane W. Dohse, 68 IBLA 240 (Nov. 16, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Herbert I. Ott, 68 IBLA 336 (Nov. 22, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

William K. Monk, 68 IBLA 339 (Nov. 22, 1982)

An oil and gas lease application signed by anyone other than the applicant must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Even if an agent's signature is not clearly legible, the regulatory requirement is satisfied if the application form refers to a qualifications file which clearly identifies the agent signing the card.

Liberty Petroleum Corp., 68 IBLA 387 (Nov. 23, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where, on a noncompetitive over-the-counter lease offer, a corporate applicant refers to a corporate qualifications file which lists all officers of the corporation, compliance with 43 CFR 3102.2-5 has been accomplished even if the file fails to show that some of the listed officers hold more than one corporate office.

Prandy, Inc., 69 IBLA 26 (Nov. 26, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

Mrs. G. C. Fajardo, 69 IBLA 70 (Nov. 30, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only three initials and the name of the corporation, and the application is properly rejected.

Paulette B. Brashear, 69 IBLA 169 (Dec. 13, 1982)

Under 43 CFR 3102.2-1(a) (1981), a partnership filing a simultaneous oil and gas lease application was required to file, or have on file under a serial reference number, a certified copy of its articles of partnership.

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c) (1981), had to be limited in duration to less than 2 years.

The provisions of 43 CFR 3102.2-1, 3102.2-4, and 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Westates Group No. 8, 69 IBLA 186 (Dec. 15, 1982)

A simultaneous oil and gas lease applicant complies with 43 CFR 3112.2-1(b), where the space for the agent's signature contains the initials of the filing service and the holographically signed last name of the authorized agent of the filing service.

Linda R. Bluskin, 69 IBLA 214 (Dec. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

Robert E. Lee, 69 IBLA 255 (Dec. 21, 1982)

Where a potential oil and gas lease applicant that has filed a statement of partnership qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-4, the application must be rejected as incomplete.

James E. Lacy, 69 IBLA 285 (Dec. 21, 1982)

A simultaneous oil and gas lease application holographically (manually) signed by the applicant is signed in accordance with 43 CFR 3112.2-1(b) where in signing the application, the applicant discloses receipt of assistance from a filing service agent and a copy of applicant's agreement with the service is provided as required by 43 CFR 3102.2-6 (1981).

Patricia C. Alker, 69 IBLA 313 (Dec. 27, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Ellis R. Ferguson, 69 IBLA 352 (Dec. 30, 1982)

640-acre Limitation

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Where a noncompetitive offer to lease covers more than 640 acres of land available for leasing at the time the offer is made, the offeror has complied with 43 CFR 3110.1-3(a), even though some of the land becomes unavailable for noncompetitive leasing before lease issuance and the remaining land involves less than 640 acres.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

No over-the-counter offer for a noncompetitive oil and gas lease on the public domain may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation (or that such plan has been approved as to form by the Director, Geological Survey), or where the land is surrounded by lands not available for leasing; where these circumstances do not exist, an offer for less than 640 acres is properly rejected.

James M. Chudnow, 65 IBLA 64 (June 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

An oil and gas lease offer to lease less than 640 acres which adjoins land available for leasing is properly rejected.

James M. Chudnow, 66 IBLA 372 (Aug. 27, 1982)

BLM may properly reject a noncompetitive oil and gas lease offer for less than 640 acres where the land is not within an approved unit or cooperative plan of operation or surrounded by lands unavailable for leasing.

Robert L. Clay, 67 IBLA 115 (Sept. 15, 1982)

BLM may not reject an oil and gas lease offer, as violating the 640-acre rule embodied in 43 CFR 3110.1-3(a), where a disqualifying portion of the land sought was covered by an outstanding oil and gas lease at the time the offer was filed but this fact was not noted in the appropriate public land records.

James M. Chudnow, 67 IBLA 143 (Sept. 16, 1982)

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

Irvin Wall, 69 IBLA 321 (Dec. 28, 1982)

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

Dayton F. Hale, 69 IBLA 167 (Dec. 13, 1982)

Six-mile Square Rule

An oil and gas offer describing land which cannot be encompassed within a 6-mile square or within an area not exceeding six surveyed sections in length or width is defective and must be rejected.

Richard W. Rose, 69 IBLA 135 (Dec. 8, 1982)

An offer to lease acquired lands for oil and gas which cannot be embraced within a 6-mile square or within an area not exceeding six surveyed sections is defective and unless the exception expressed in 43 CFR 3110.1-3(b) applies, should be rejected.

The area limitation found in 43 CFR 3110.1-3 is stated as an alternative, and the rule may be satisfied by complying with either containment of the lands requested within a square 6 miles in length and width or within an area six surveyed sections in length and width.

43 CFR 3110.1-3 specifically states that an *offer* shall be within the designated area limitation and where it is clear that the lands applied for cannot be included within an area conforming to the regulation, the offer must be rejected in its entirety.

Yester Songer, 69 IBLA 296 (Dec. 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement signed by himself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Richard M. Sporcic, 62 IBLA 159 (Mar. 8, 1982)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Diane H. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

Bob Reid, 64 IBLA 17 (May 4, 1982)

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Dove, 65 IBLA 340 (July 16, 1982)

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe D. Smith, 66 IBLA 1 (July 23, 1982)
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Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

Audrey Jean Poston, 67 IBLA 117 (Sept. 16, 1982)

Where the regulation, 43 CFR 3102.2-7, requiring the offeror for an oil and gas lease to file a copy of an agreement under which a royalty interest in the lease will be conveyed to a third party is repealed, it is not proper to reject the offer for failure to comply with the repealed regulation unless there was a proper conflicting offer filed for the same land prior to the date of the repeal, which was Feb. 26, 1982.

Richard S. Gaddy, W. R. Newberry, 67 IBLA 373 (Oct. 8, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

A decision partly rejecting an oil and gas lease offer because the lands are included in a lease issued to a prior applicant will be affirmed on appeal upon a finding that appellant's contention that the prior applicant failed to comply with the requirements for disclosure of other parties in interest is simply unfounded.

Irvin Wall, 68 IBLA 276 (Nov. 17, 1982)

Oil and gas lease offers filed prior to Feb. 26, 1982, are properly rejected when statements as to other parties in interest required by 43 CFR 3102.2-7(b) (1981) are not timely submitted. Nevertheless, over-the-counter offers may be reinstated and allowed to earn priority from the time of the filing of the missing statements.

Sumatra Energy Co., 68 IBLA 313 (Nov. 19, 1982)

ASSIGNMENTS OR TRANSFERS

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee to hold Federal oil and gas leases or lack of sufficient bond. However, the failure to submit three manually executed assignment forms as required by 43 CFR 3106.2-2, is a curable defect.

North Central Oil Corp., 62 IBLA 38 (Feb. 24, 1982)

Where a proposed assignment has been filed with BLM but has not yet been approved, the original lessee of an oil and gas lease is the holder of record.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

A unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. Longstanding Departmental policy requires withholding action to either approve or reject the assignment until the dispute between the parties is resolved through agreement or litigation.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where the Bureau of Land Management has denied approval of an assignment for failure to file three completed and manually signed copies in the appropriate BLM office and this Department is made aware of private litigation between the assignor and assignee as to the validity or effect of the assignment, the Department will suspend action on any assignment or request for permission to drill until the parties resolve the controversy by agreement or by litigation.

The July Corp., 66 IBLA 20 (July 23, 1982)

BONA FIDE PURCHASER

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Erwin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

A bona fide purchaser must have acquired his interest in an oil and gas lease in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent man on inquiry which if followed with reasonable diligence would lead to discovery of defects in title or equitable rights of others affecting the lease.

The knowledge of the assignee's agent and/or employee acting for the principal in connection with obtaining the lease is generally attributable to the assignee in determining whether the assignee qualifies as a bona fide purchaser.

Payment of valuable consideration prior to knowledge or notice of a superior right is a necessary element of bona fide purchaser status.

Richard B. Eckels, 62 IBLA 1 (Feb. 22, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. B. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

Even assuming *arguendo* that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

Robert E. Byrne, 63 IBLA 100 (Mar. 31, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there was no formal protest against the lease pending, provided that the purchaser of the lease pending had no actual knowledge of any defect in the underlying offer.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

The protection afforded a bona fide purchaser of an oil and gas lease applies only where consideration has been paid. An unperformed obligation to pay the assignor is not generally sufficient value. Receipt by the purchaser of notice that a lease is subject to cancellation prior to payment of the obligation to the assignor which the purchaser has assumed will bar bona fide purchaser status even if the assignee thereafter pays the obligation.

Richard W. Eckels (On Reconsideration), 65 IBLA 76 (June 23, 1982)

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease notwithstanding the fact that the later lease has been assigned to parties claiming bona fide purchaser status. An assignee can stand in no better position than the assignor.

Fortune Oil Co., 69 IBLA 13 (Nov. 24, 1982)

CANCELLATION

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Cooper, 64 IBLA 146 (May 24, 1982)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

R. L. Mulholland, 67 IBLA 14 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first-qualified applicant.

Irvin Hall, 67 IBLA 301 (Sept. 30, 1982)

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertance of his subordinates.

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease notwithstanding the fact that the later lease has been assigned to parties claiming bona fide purchaser status. An assignee can stand in no better position than the assignor.

Fortune Oil Co., 69 IBLA 13 (Nov. 24, 1982)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

Paul B. Temple, 69 IBLA 54 (Nov. 29, 1982)

COMMUNITIZATION AGREEMENTS

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

Where no approval of a communitization agreement has been given by the Department, production of oil or gas from another lease within a state spacing unit cannot be attributed to a Federal lease on which there is no well capable of producing oil or gas prior to the expiration of the primary term of the lease, and such lease expires by operation of law at the end of its primary term.

Kennedy & Mitchell, Inc., 68 IBLA 80 (Oct. 21, 1982)

OIL AND GAS LEASES--Continued

COMMUNITIZATION AGREEMENTS--Continued

Production of oil or gas pursuant to an approved communitization agreement is regarded as production for each lease committed to the agreement. A lease does not qualify for extension by reason of production at the end of its primary term where a communitization agreement associating the leased lands with a producing well on other lands is not filed with Geological Survey until after expiration of the lease.

Marathon Oil Co., 68 IBLA 391 (Nov. 9, 1982)

COMPENSATORY ROYALTY

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

COMPETITIVE LEASES

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cayley, John J. Cayley, 61 IBLA 205 (Jan. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982)
89 I.D. 82

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James E. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

Oil and gas leases may be acquired and held only by citizens of the United States, associations of citizens (including partnerships), corporations, and municipalities. The Mineral Leasing Act does not prohibit the creation of joint tenancies when oil and gas leases are issued. Where the two offerors are designated on a competitive oil and gas lease bid as "Turner C. Smith, Jr. and Signe D. Smith, husband and wife, as Joint Tenants, DBA Turner Smith & Associates" and the bid is signed by each person individually, the bid is acceptable in that form since it is possible to determine the full names of the offerors.

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe D. Smith, 66 IBLA 1 (July 23, 1982)
89 I.D. 386

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Harris-Headrick, 66 IBLA 84 (July 29, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

Where the notice of a competitive sale of oil and gas leases clearly provided that the leases would be subject to a "No Surface Occupancy" stipulation, by making a bid for the indicated parcel, the bidder was bound to accept the stipulation.

Where, through inadvertence, there was failure to include the "No Surface Occupancy" stipulation recited in the sale notice with the executed lease, BLM is not estopped to require compliance with the omitted stipulation when the omission is discovered after issuance of the lease.

Anadarko Production Co., 66 IBLA 174 (Aug. 12, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration of the bid.

Pierson & Cochran, 67 IBLA 1 (Sept. 1, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 30 (Sept. 8, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

L. B. Blake, 67 IBLA 103 (Sept. 15, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Stanley E. Davis, 67 IBLA 348 (Oct. 5, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Mary M. Gonzales, 67 IBLA 351 (Oct. 5, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where competitive oil and gas lease high bids are not clearly spurious or unreasonable on their face and the record fails to disclose sufficient factual basis for the conclusion that the bids are inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bids. A justification memorandum that does not reveal the estimated minimum values for the parcels and the factual data on which the estimates were based is not sufficient to support rejection of the high bids for the parcels.

H. Robert Paglee, 68 IBLA 231 (Nov. 16, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Snyder Oil Co., 69 IBLA 259 (Dec. 21, 1982)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Bachelk Production, Inc., 64 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Emery Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James E. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Pavulak, 63 IBLA 16 (Mar. 26, 1982)

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Boxas Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, i.e., a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed because no change has been made in the land actually covered by the lease.

Ray A. Frey et al., 65 IBLA 192 (June 29, 1982)

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where BLM issues an oil and gas lease pursuant to an oil and gas lease offer which includes a land description which meets the requirements of 43 CFR 3101.1-4(a), the offer is not defective and BLM may properly reject a subsequent offer for the leased lands.

Irvin Wall, 66 IBLA 130 (Aug. 10, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James E. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

James E. Chudnow, John L. Messinger, 68 IBLA 228 (Nov. 15, 1982)

James E. Chudnow, John L. Messinger, 69 IBLA 1?7 (Dec. 13, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Brubatz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "BSPN and PHS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James B. Chudnow, John L. Messinger, 68 IBLA 181 (Nov. 8, 1982)

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Oil and gas lease offers for surveyed lands must describe the lands by legal subdivision, section, township, and range. Indication of the county where the described land lies is an added convenience found on the offer form, and erroneous indication of the county does not render a land description fatally defective.

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, an acquired lands oil and gas lease offer using such a description must be accompanied by a map clearly marked showing the location of the requested lands or the offer will be rejected.

Foster Songer, 69 IBLA 177 (Dec. 15, 1982)

DISCOVERY

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Enslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

DISCRETION TO LEASE

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James B. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Under sec. 17 of the Mineral Leasing Act of 1920, *as amended*, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta F. Stroock, 63 IBLA 119 (Apr. 2, 1982)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

James R. Chudnow, 63 IBLA 309 (Apr. 27, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has consolidated its holdings in order to manage the lands for recreational, scenic, and wildlife values, which BLM determines oil and gas leasing would damage, rejection of the lease offer will be affirmed.

Connie Hull, 63 IBLA 317 (Apr. 27, 1982)

Great White, Inc., 65 IBLA 207 (June 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettigrew, 64 IBLA 336 (June 10, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

Bachalk Production, Inc., 65 IBLA 271 (July 12, 1982)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has accomplished an oil and gas environmental analysis which supports the rational conclusion that leasing would be detrimental to its efforts to manage the lands for recreational, scenic, and wildlife values, rejection of the lease offer will be affirmed.

Great White, Inc., 65 IBLA 310 (July 13, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry R. Clark, 66 IBLA 23 (July 23, 1982)

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Harris-Hendrick, 66 IBLA 84 (July 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation.

Thomas Connelly et al., 66 IBLA 265 (Aug. 17, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Pierson & Cochran, 67 IBLA 1 (Sept. 1, 1982)

L. R. Blake, 67 IBLA 103 (Sept. 15, 1982)

Stanley R. Davis, 67 IBLA 348 (Oct. 5, 1982)

Mary R. Gonzales, 67 IBLA 351 (Oct. 5, 1982)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

James E. Chudnow, John L. Messinger, 67 IBLA 360 (Oct. 7, 1982)

Ted C. Findeiss, 69 IBLA 34 (Nov. 29, 1982)

A determination by BLM refusing to issue an oil and gas lease on the ground that the lands applied for are within outstanding natural areas will be set aside and remanded for clarification where BLM's declarations as to the public interest are conclusory and where the record indicates that approximately half the lands rejected may not actually lie within areas of outstanding environmental values.

Rachalk Production, Inc., 68 IBLA 75 (Oct. 21, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect relict plant communities and the suitability of the West Potrillo Mountains as habitat for pronghorn antelope.

James E. Chudnow, John L. Messinger, 68 IBLA 128 (Oct. 28, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where competitive oil and gas lease high bids are not clearly spurious or unreasonable on their face and the record fails to disclose sufficient factual basis for the conclusion that the bids are inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bids. A justification memorandum that does not reveal the estimated minimum values for the parcels

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

and the factual data on which the estimates were based is not sufficient to support rejection of the high bids for the parcels.

E. Robert Pagles, 68 IBLA 231 (Nov. 16, 1982)

A BLM decision refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be vacated where the reasons set forth are not supported by the record.

D. E. Yates, 68 IBLA 237 (Nov. 16, 1982)

Uncertainty of title to oil and gas in a tract of land is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States. A decision rejecting an offer covering islands in a navigable river will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. Rejection of an offer is proper where the record demonstrates leasing might adversely affect sensitive biological species in the Algodones Dunes Outstanding Natural Area.

Eagle Exploration Co., 69 IBLA 96 (Nov. 30, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Snyder Oil Co., 69 IBLA 259 (Dec. 21, 1982)

DRAINAGE

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

DRILLING

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

EXTENSIONS

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

Production of oil or gas pursuant to an approved communitization agreement is regarded as production for each lease committed to the agreement. A lease does not qualify for extension by reason of production at the end of its primary term where a communitization agreement associating the leased lands with a producing well on other lands is not filed with Geological Survey until after expiration of the lease.

Marathon Oil Co., 68 IBLA 191 (Nov. 9, 1982)

Where BLM holds that a noncompetitive oil and gas lease has expired because drilling operations were not diligently pursued after the end of its primary term and on appeal the operator presents evidence raising an issue of fact regarding drilling operations, the case will be remanded for a factual determination of whether the lease is entitled to a 2-year extension under 43 CFR 3107.2-3.

Christian F. Murer, 68 IBLA 356 (Nov. 22, 1982)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

Fuel Resources Development Co., 69 IBLA 39 (Nov. 29, 1982)

FIRST-QUALIFIED APPLICANT

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

Hilco Properties, Inc., 68 IBLA 215 (Nov. 10, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Deemar, 63 IBLA 217 (Apr. 13, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Paiute Oil & Mining Corp., 69 IBLA 172 (Dec. 14, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 24, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren R. Haas, 66 IBLA 107 (Aug. 4, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Leo F. Sas, 67 IBLA 36 (Sept. 8, 1982)

Irvin Wall, 68 IBLA 299 (Nov. 19, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror incorrectly alleges that the senior offeror had not identified the proper county in describing the land.

Irvin Wall, 68 IBLA 243 (Nov. 16, 1982)

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

Irvin Wall, 69 IBLA 175 (Dec. 14, 1982)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered and applicant's failure to check these items on the form cannot be cured where the rights of the second-drawn applicant have intervened.

Leonard Stegman, 68 IBLA 364 (Nov. 22, 1982)

A defective application for noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive offer to lease for oil and gas and does not create a property right in the offeror.

Fen F. Tseng, 68 IBLA 381 (Nov. 23, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where, on a noncompetitive over-the-counter lease offer, a corporate applicant refers to a corporate qualifications file which lists all officers of the corporation, compliance with 43 CFR 3102.2-5 has been accomplished even if the file fails to show that some of the listed officers hold more than one corporate office.

Frandy, Inc., 69 IBLA 26 (Nov. 26, 1982)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by an offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer if the corporate president serves in a dual capacity as treasurer and the president's identity is disclosed on the list.

Paul R. Tearle, 69 IBLA 54 (Nov. 29, 1982)

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

R. E. French, 69 IBLA 66 (Nov. 30, 1982)

A noncompetitive oil and gas lease offer is properly rejected in favor of a senior offer that would qualify regardless of whether it was adjudicated on the basis of the rules applicable at the time it was filed or at the time the lease was issued.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

EVK Partnership, 69 IBLA 199 (Dec. 15, 1982)

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by the offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer or secretary if these offices are held by other corporate officers serving in a dual capacity and the identity of these corporate officers is disclosed by the list.

Paul R. Tearle, 69 IBLA 275 (Dec. 21, 1982)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where it is not accompanied either by partnership qualification papers, as required by 43 CFR 3102.2-4, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c).

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

FUTURE AND FRACTIONAL INTEREST LEASES

Where the Government owns a 50 percent mineral interest in certain acquired lands and subsequently obtains the remaining 50 percent mineral interest in those lands at a time in which the original interest is not under lease, the Government may not thereafter issue a fractional interest lease for these lands.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

Where the Government owns a 50 percent mineral interest in certain acquired lands and has issued an oil and gas lease for that fractional interest, and it then obtains the remaining 50 percent at a time when the original acquired fractional interest is still under lease, it is error to issue a second oil and gas lease to another party for the newly vested fractional interest, and the second lease is properly canceled upon recognition of the error.

Where the Government owns a 50 percent mineral interest in certain acquired lands and it subsequently obtains the remaining 50 percent mineral interest at a time when the originally acquired interest is subject to a federal oil and gas lease, the recently acquired fractional interest is not automatically included in the existing oil and gas lease of the original fractional interest.

SOCO 1980 Acreage Program, 68 IBLA 132 (Oct. 28, 1982)

KNOWN GEOLOGIC STRUCTURE

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lyon, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcore, Inc., 68 IBLA 130 (Oct. 28, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure (KGS) of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. Where appellant provides technical data to support his contention and the record contains only a conclusory determination that the land is within a KGS, the Board may call for further substantiation of the basis for the KGS finding in light of appellant's data.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A noncompetitive oil and gas lease application must be rejected where at any time prior to the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Lida B. Drusheller, 63 IBLA 290 (Apr. 22, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Auslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

LANDS SUBJECT TO

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James E. Phillips, 61 IBLA 294 (Feb. 3, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982)
89 I.D. 82

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The fact that oil and gas leases may have been wrongly issued in the past for lands which were not available for leasing does not militate in favor of reenacting the wrong for the sake of consistency or to avoid discriminatory treatment of a subsequent offeror.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

R. E. Haley, 62 IBLA 294 (Mar. 16, 1982)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Robert C. Rood, 62 IBLA 391 (Mar. 24, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Coupey, 64 IBLA 146 (May 24, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Brubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

Land included in an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected whether or not the outstanding lease was properly issued as to that land.

James M. Chudnow, 67 IBLA 143 (Sept. 16, 1982)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the lands applied for are not withdrawn from operation of the Mineral Leasing Act. An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

De Ann J. Garth, 69 IBLA 79 (Nov. 30, 1982)

Frances Kunkel, 69 IBLA 205 (Dec. 16, 1982)

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

Dayton E. Hale, 69 IBLA 167 (Dec. 13, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Paiute Oil & Mining Corp., 69 IBLA 172 (Dec. 14, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application filed for such land must be rejected. Even if the outstanding lease were canceled, the land would not be available for over-the-counter leasing, since land within a canceled lease may be leased again only in compliance with the drawing procedure established by 43 CFR 3112.

Irvin Wall, 69 IBLA 321 (Dec. 28, 1982)

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. Where oil and gas lease offers embrace lands withdrawn or reserved for an agency of the Department of Defense, the lands may only be leased after consultation with the Department of Defense.

Douglas E. Smith, 69 IBLA 343 (Dec. 28, 1982)

NONCOMPETITIVE LEASES

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcoex, Inc., 68 IBLA 130 (Oct. 28, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havoco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Coupey, 64 IBLA 146 (May 24, 1982)

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Regimbal, 64 IBLA 170 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Buslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren E. Bass, 66 IBLA 107 (Aug. 4, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lynn, 66 IBLA 141 (Aug. 10, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (*i.e.*, one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Leo P. Sam, 67 IBLA 36 (Sept. 8, 1982)

Irvin Wall, 68 IBLA 299 (Nov. 19, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Energy Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first-qualified applicant.

Irvin Wall, 67 IBLA 301 (Sept. 30, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

Paul B. Temple, 69 IBLA 54 (Nov. 29, 1982)

OVERRIDING ROYALTIES

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

PATENTED OR ENTERED LANDS

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with

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OIL AND GAS LEASES--Continued

PATENTED OR ENTERED LANDS--Continued

no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

PRODUCTION

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Buslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

REINSTATEMENT

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James B. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's inadvertent misplacement of office records during the changeover in his office location.

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

Richard C. Hubbard, 68 IBLA 170 (Nov. 4, 1982)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

The Secretary is without authority under existing law to reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due unless such rental is paid or tendered within 20 days thereafter.

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1976) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226(e) (1976) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 64 IBLA 119 (May 19, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Emerson L. Kuss, 64 IBLA 121 (May 19, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, *i.e.*, due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

L. W. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due or by a delay in receiving assignment forms which prevented shifting the responsibility for lease payment prior to the anniversary date.

Alminex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

Jack J. Grynberg, 64 IBLA 354 (June 15, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

Zions First National Bank, 67 IBLA 43 (Sept. 8, 1982)

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

Kristie R. Cobb, 67 IBLA 59 (Sept. 9, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental after it was due does not constitute reasonable diligence. Late payment is not justified by the fact that the lessee did not receive a courtesy notice from the Bureau of the Land Management, or the fact that he received erroneous advice from BLM employees.

Peter B. Buehler, 67 IBLA 242 (Sept. 24, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by inadvertence, reliance on courtesy billing notices, or reliance upon a purported assignee to make the payment.

Robert G. Armstrong et al., 67 IBLA 357 (Oct. 6, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

BLM's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

Ross L. Terenzi, 68 IBLA 21 (Oct. 19, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was justifiable. A late payment will not be excused where payment was transmitted after the due date and the lessee asserts that he was unaware of the appropriate due date.

Rhakic Associates, 68 IBLA 72 (Oct. 22, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment the day it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. The fact that appellant "commutes" to his place of business in California from his home in Illinois, does not justify late payment.

Donald L. Darrow, 69 IBLA 62 (Nov. 29, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Where a lessee misdirects a lease rental payment to the wrong Bureau of Land Management office and it arrives at the office on the anniversary date of the lease, there can be no finding of reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. An accidental deviation in a lessee's normal payment procedure which results in payment being misdirected to the wrong Bureau of Land Management office is not a circumstance outside the lessee's control.

Gulf Oil Corp., 69 IBLA 263 (Dec. 21, 1982)

RELINQUISHMENTS

Where a lessee relinquishes an oil and gas lease, he is exercising a right given to him by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. R. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

OIL AND GAS LEASES--Continued

RENTALS

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James E. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

Richard C. Hubbard, 68 IBLA 170 (Nov. 4, 1982)

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Ronald A. Jarett, 63 IBLA 228 (Apr. 16, 1982)
89 I.D. 207

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Falicobeis, 64 IBLA 119 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Alpinex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Robert G. Armstrong et al., 67 IBLA 357 (Oct. 6, 1982)

Donald L. Farrow, 69 IBLA 62 (Nov. 29, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Malstrom, 66 IBLA 269 (Aug. 17, 1982)

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

Kristie B. Cobb, 67 IBLA 59 (Sept. 9, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

James M. Chudnow, John L. Messinger, 68 IBLA 228 (Nov. 15, 1982)

James M. Chudnow, John L. Messinger, 69 IBLA 157 (Dec. 13, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Peter B. Buehler, 67 IBLA 242 (Sept. 24, 1982)

BLM's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

Rose L. Terenzi, 68 IBLA 21 (Oct. 19, 1982)

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "ESPW and PWS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 68 IBLA 181 (Nov. 8, 1982)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everrite, 68 IBLA 225 (Nov. 15, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the payment in the file.

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days

OIL AND GAS LEASES--Continued

RENTALS--Continued

from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

R. E. Frasch, 69 IBLA 66 (Nov. 30, 1982)

It is the responsibility of a lessee to see that any payment tendered for annual rental of an oil and gas lease is so identified that the appropriate Bureau of Land Management office can credit the payment to the proper lease account. Where the official assignment creating the lease contains the correct serial number, and where the lessee has previously been given a courtesy notice and receipts bearing the correct identification number, but the lessee does not return the notice with his payment and, instead, includes an incorrect identification number on his payment check, he has not adequately identified his payment, and the lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease.

Pyro Energy Corp., 69 IBLA 327 (Dec. 28, 1982)

RIGHTS-OF-WAY LEASES

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

An oil and gas lease issued under the Mineral Leasing Act of 1920 does not include the oil and gas deposits underlying a railroad right-of-way, which crosses the leased tract, even though the lease does not expressly except such deposits from its coverage.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

ROYALTIES

A request for refund, repayment, or crediting of excess payments against future payments due under 43 U.S.C. § 1339 (1976) must be made as the limitation in the statute provides, within 2 years from the date such excess payments are actually made.

Where a Geological Survey audit revealing that a lessee has underpaid royalties on certain leases is challenged by the lessee who alleges that overpayments were also made on the same leases during the audit period, and where Geological Survey has assessed the lessee for the underpayments, but not considered the merits of the lessee's allegations with respect to overpayments, the case will be remanded to Geological

ROYALTIES--Continued

Survey to determine whether offsets of payments would have been proper.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

STIPULATIONS

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marla J. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Mavocco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Where the notice of a competitive sale of oil and gas leases clearly provided that the leases would be subject to a "No Surface Occupancy" stipulation, by making a bid for the indicated parcel, the bidder was bound to accept the stipulation.

Where, through inadvertence, there was failure to include the "No Surface Occupancy" stipulation recited in the sale notice with the executed lease, BLM is not estopped to require compliance with the omitted stipulation when the omission is discovered after issuance of the lease.

Anadarko Production Co., 66 IBLA 174 (Aug. 12, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Applicants for oil and gas leases may be required to accept a stipulation as reasonable and in the public interest and in accord with national and departmental policy, which stipulation requires lessees to engage the services of a qualified professional archaeologist to conduct a survey of the areas to be leased for evidences of archaeological or historic sites or materials with the cost to be borne by the lessees.

Altex Oil Corp., 67 IBLA 197 (Sept. 22, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Energy Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

Ida Lee Anderson, John B. Anderson, 67 IBLA 340 (Oct. 5, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

James H. Chudnow, John L. Messinger, 67 IBLA 360 (Oct. 7, 1982)

Ted C. Findeiss, 69 IBLA 34 (Nov. 29, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

case to BLM so that his offer may be considered with priority as of that time.

James M. Chudnow, 68 IBLA 87 (Oct. 22, 1982)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

Ted C. Findeiss, 68 IBLA 167 (Oct. 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of environmental and other land use values, such special stipulations must be supported by valid reasons weighed with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be affirmed where the record on appeal indicates that the restriction is based on valid concerns and the applicant fails to show that the restriction is unreasonable.

James M. Chudnow, 69 IBLA 16 (Nov. 24, 1982)

SUSPENSIONS

The applicable statute, 30 U.S.C. § 184(j) (1976), and regulation, 43 CFR 3108.3(e), authorize the granting of a suspension of lease term and obligation to pay rental where, during a proceeding described therein, a party files with the Secretary a waiver of his rights under the lease, including particularly, where applicable, rights to drill and to assign.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

A timely-filed application for suspension of an oil and gas lease is an appropriate vehicle for protecting the rights of a lessee where prejudice is threatened by delay in granting an application for a permit to drill a well without fault of the lessee. Although an application for suspension filed prior to lease expiration may be approved retroactively after the expiration date, the lease expires at the end of its term if no

OIL AND GAS LEASES--Continued

SUSPENSIONS--Continued

application for suspension is filed prior to the expiration date.

Fuel Resources Development Co., 69 IBLA 39 (Nov. 29, 1982)

TERMINATION

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas B. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James M. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days after the anniversary date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

I. W. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

Peter B. Buehler, 67 IBLA 242 (Sept. 24, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Alminex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Robert G. Armstrong et al., 67 IBLA 357 (Oct. 6, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Ross L. Terenzi, 68 IBLA 21 (Oct. 19, 1982)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

John G. Swanson, 66 IBLA 200 (Aug. 13, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

Zions First National Bank, 67 IBLA 43 (Sept. 8, 1982)

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

Kristie B. Cobb, 67 IBLA 59 (Sept. 9, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982)
89 I.D. 480

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was justifiable. A late payment will not be excused where payment was transmitted after the due date and the lessee asserts that he was unaware of the appropriate due date.

Pharro Associates, 68 IBLA 92 (Oct. 22, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days of the anniversary date.

Richard C. Hubbard, 68 IBLA 170 (Nov. 4, 1982)

Where BLM holds that a noncompetitive oil and gas lease has expired because drilling operations were not diligently pursued after the end of its primary term and on appeal the operator presents evidence raising an issue of fact regarding drilling operations, the case will be remanded for a factual determination of whether the lease is entitled to a 2-year extension under 43 CFR 3107.2-3.

Christian F. Murer, 68 IBLA 356 (Nov. 22, 1982)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

A timely-filed application for suspension of an oil and gas lease is an appropriate vehicle for protecting the rights of a lessee where prejudice is threatened by delay in granting an application for a permit to drill a well without fault of the lessee. Although an application for suspension filed prior to lease expiration may be approved retroactively after the expiration date, the lease expires at the end of its term if no application for suspension is filed prior to the expiration date.

Fuel Resources Development Co., 69 IBLA 39 (Nov. 29, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized

OIL AND GAS LEASES--Continued

TERMINATION--Continued

reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. The fact that appellant "commutes" to his place of business in California from his home in Illinois, does not justify late payment.

Donald L. Darrow, 69 IBLA 62 (Nov. 29, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Where a lessee misdirects a lease rental payment to the wrong Bureau of Land Management office and it arrives at the office on the anniversary date of the lease, there can be no finding of reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. An accidental deviation in a lessee's normal payment procedure which results in payment being misdirected to the wrong Bureau of Land Management office is not a circumstance outside the lessee's control.

Gulf Oil Corp., 69 IBLA 263 (Dec. 21, 1982)

It is the responsibility of a lessee to see that any payment tendered for annual rental of an oil and gas lease is so identified that the appropriate Bureau of Land Management office can credit the payment to the proper lease account. Where the official assignment creating the lease contains the correct serial number, and where the lessee has previously been given a courtesy notice and receipts bearing the correct identification number, but the lessee does not return the notice with his payment and, instead, includes an incorrect identification number on his payment check, he has not adequately identified his payment, and the lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease.

Pyro Energy Corp., 69 IBLA 327 (Dec. 28, 1982)

UNIT AND COOPERATIVE AGREEMENTS

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D. 480

WELL CAPABLE OF PRODUCTION

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

approved reworking or drilling operations are commenced within 60 days of cessation of production.

John G. Swanson, 66 IBLA 200 (Aug. 13, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D. 480

OIL SHALE

GENERALLY

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

MINING CLAIMS

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

The Department is not barred by the equitable doctrines of laches or waiver from declaring oil shale placer mining claims null and void, since, until patent issues, it has the power and duty to invalidate adverse interests in public lands as required by governing laws.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

OIL SHALE--Continued

WITHDRAWALS

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Agnes Jones et al., 61 IBLA 149 (Jan. 18, 1982)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

TIMBER SALES

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.C.T.S., 61 IBLA 166 (Jan. 25, 1982)

OUTER CONTINENTAL SHELF LANDS ACT

(*See also* Oil & Gas Leases--if included in this Index.)

GEOLOGICAL AND GEOPHYSICAL EXPLORATION

Generally

Under 30 CFR 251.6-3(d), the Director of Geological Survey will require republication of an exploratory test drilling application and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that these changes are significant. Proposed changes to the Department of the Interior's announced Outer Continental Shelf leasing schedule or proposed changes to regulations governing test drilling are not significant changes within the meaning of 30 CFR 251.6-3(d).

Shell Oil Co., 66 IBLA 397 (Aug. 31, 1982) 89 I.D. 430

30 CFR 251.6-3(a) directs that a person proposing to drill a deep stratigraphic test well provide an opportunity through a signed agreement for other interested persons to participate on a cost-sharing basis. Where an oil company announces such a proposal, makes itself available to discuss the proposals, and negotiates details of the agreement with interested parties, it has provided the required opportunity. A person that indicates an interest, participates in discussion of the proposal, and thereafter notifies the company that it has decided not to participate has not been denied the opportunity to participate.

Under 30 CFR 251.6-3(d), the Director of Geological Survey will only require republication of exploratory test drilling applications and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that those changes are significant. Changes negotiated in the cost-share agreement, the correction of an error in the published description of the location of a well, and changed circumstances not affecting the application are not significant charges as contemplated by 30 CFR 251.6-3(d).

Sohio Alaska Petroleum Co., 68 IBLA 250 (Nov. 16, 1982)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

REFUNDS

Where a Geological Survey audit revealing that a lessee has underpaid royalties on certain leases is challenged by the lessee who alleges that overpayments were also made on the same leases during the audit period, and where Geological Survey has assessed the lessee for the underpayments, but not considered the merits of the lessee's allegations with respect to overpayments, the case will be remanded to Geological Survey to determine whether offsets of payments would have been proper.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

UNIT PLANS

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

PATENTS OF PUBLIC LANDS

GENERALLY

A decision holding that title to a tract of land has reverted to the United States will be affirmed where the land together with its improvements was patented to a municipality to be used only for school or other public purposes subject to reversion if the Secretary of the Interior finds the grantee has violated the conditions for a period of 1 year and where the record discloses that grantee has removed the school structures thereon and failed to use the land for 15 years thereafter.

City of Cordova, 62 IBLA 198 (Mar. 9, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn H. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Brasiff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

PATENTS OF PUBLIC LANDS--Continued

AMENDMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

EFFECT

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

RESERVATIONS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several [illegible]

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, *as amended*, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

PAYMENTS

(*See also* Accounts--if included in this Index.)

GENERALLY

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

PHOSPHATE LEASES AND PERMITS

(*See also* Mineral Leasing Act--if included in this Index.)

PERMITS

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

GeoResources, Inc., 67 IBLA 297 (Sept. 29, 1982)

POTASSIUM LEASES AND PERMITS

(*See also* Mineral Leasing Act--if included in this Index.)

LEASES

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, *as amended*, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

International Minerals & Chemical Corp., 69 IBLA 114 (Nov. 30, 1982)

Noranda Exploration, Inc., 69 IBLA 317 (Dec. 27, 1982)

POWERSITE LANDS

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, *as amended*.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

POWERSITE LANDS--Continued

George L. Perkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

Under the decision in *Reeves* v. *Andrus*, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

PUBLIC LANDS

(*See also* Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

GENERALLY

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 *et seq.* (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

National Forest lands are not "available public...lands." As such, they are not intended by Congress to be included within the Paiute's proposed reservation enlargement plan under the Paiute Restoration Act.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982)
89 I.D. 403

PUBLIC LANDS--Continued

ADMINISTRATION

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Pay, 68 IBLA 26 (Oct. 21, 1982)

CLASSIFICATION

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the *Federal Register* of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Milalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

DISPOSALS OF

Generally

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 *et seq.* (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982)
89 I.D. 403

LEASES AND PERMITS

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

RIPARIAN RIGHTS

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

SPECIAL USE PERMITS

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

PUBLIC RECORDS
(*See also* Administrative Procedure, Confidential Information--if included in this Index.)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Letha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

PUBLIC RECORDS--Continued

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

PUBLIC SALES

APPLICATIONS

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

SALES UNDER SPECIAL STATUTES

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

RAILROAD GRANT LANDS

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489 *as amended* by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

One will not be considered an innocent purchaser for value under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), when the evidence presented at a hearing supports a finding that the lands in question were of known mineral character on the date of the original sale by the railroad, and the purchaser should have known at the time of purchase that such lands were excepted from the grant to the railroad.

United States v. Southern Pacific Transportation Co. & Donald E. Lee, 66 IBLA 191 (Aug. 13, 1982)

RECLAMATION HOMESTEADS

(*See also* Homesteads (Ordinary)--if included in this Index.)

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

RECLAMATION LANDS

(*See also* Irrigation Claims, Rights-of-Way--if included in this Index.)

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

REGULATIONS

(See also Administrative Procedure--if included in this Index.)

GENERALLY

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Rooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 375 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukola, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola R. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Warren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Robert J. Maby et al., 67 IBLA 370 (Oct. 8, 1982)

Gregory A. Yoetsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

REGULATIONS--Continued

GENERALLY--Continued

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Deirdre Deremus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Consovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

REGULATIONS--Continued

GENERALLY--Continued

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the *Federal Register* or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, and are not entitled to rely on interpretations thereof used in another state office.

Yen F. Tzeng, 68 IBLA 381 (Nov. 23, 1982)

APPLICABILITY

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished from a "valid existing right" in public law terminology and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and

REGULATIONS--Continued

APPLICABILITY--Continued

the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

Brian D. Haas, 66 IBLA 353 (Aug. 27, 1982)

Audrey Jean Foston, 67 IBLA 117 (Sept. 16, 1982)

Where the regulation, 43 CFR 3102.2-7, requiring the offeror for an oil and gas lease to file a copy of an agreement under which a royalty interest in the lease will be conveyed to a third party is repealed, it is not proper to reject the offer for failure to comply with the repealed regulation unless there was a proper conflicting offer filed for the same land prior to the date of the repeal, which was Feb. 26, 1982.

Richard S. Gaddy, H. R. Newberry, 67 IBLA 373 (Oct. 8, 1982)

BINDING ON THE SECRETARY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Once a regulation is adopted by the Department, and so long as it remains extant, the Secretary and his representatives are bound by it and it has the force and effect of law.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

REGULATIONS--Continued

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

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Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982)
89 I.D. 196

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982)
89 I.D. 262

INTERPRETATION

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 6, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

REGULATIONS--Continued

PUBLICATION

Under 5 U.S.C. § 552(a)(1) (1976) and the Supreme Court's holding in *Morton* v. *Ruiz*, 415 U.S. 199 (1974), an individual may not be deprived of benefits solely on the basis of an eligibility standard published only in the BIA manual.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982)
89 I.D. 508

Wilbur Norton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Denally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Estate of Eugene Patrick Purvis, 11 IBIA 11 (Dec. 28, 1982)

REINSTATEMENT

GENERALLY

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

RENT

An upward amenity adjustment of 2 percent to basic rental rate is correctly calculated in accordance with the economically homogeneous area survey method, IHPR 114-52.303(b), when the number of amenities present for Government-furnished quarters is one more than the average number of amenities present in the private rental survey of comparable private housing in an economically homogeneous area in which the Government rental quarters are located.

Appeal of Mary T. Foss, 5 OHA 15 (Sept. 30, 1982)

Where a 7 percent limitation on increases in net basic rental rates was not applied to the rate previous to the one resulting from a survey of an economically homogeneous area, the case will be remanded for a determination of what amount should be credited to the employee for overpayment of rates in accordance with 41 CFR 114-52.602(a)3.

Where the record contains unreconciled allegations concerning facts necessary for the determination of the proper monthly basic rental rate, the case will be remanded for findings of fact.

Where improper guidelines were used to calculate the amenity adjustment for a particular quarters unit, and application of the correct standards to the record indicates that the contested amenities did not exist for that unit, the case will be remanded for a determination of the amenity adjustment in accordance with the correct standards.

The Consumer Price Index adjustment is correctly applied against an employee's biweekly rental payroll deduction.

Appeal of Robert W. Jones, 5 OHA 21 (Oct. 12, 1982)

The 7 percent limitation on rental rate increases imposed by Secretary Andrus to rental increases effective after Dec. 13, 1978, was properly restricted by implementing instructions of the Deputy Assistant Secretary--Policy, Budget, and Administration, to increases in the "net basic rental rate" and did not apply to any passthrough charge collected by the Government for utilities, furnishings, or related services that by law must reflect prevailing community rates.

There is no duplicative charge for furnishings where the monthly basic rental rate is calculated after deducting standard amounts for these items.

Tuba City Housing Appeals Ass'n, 5 OHA 33 (Oct. 12, 1982)

RENT--Continued

When appealing tenants fail to show that there was anything improper or contrary to stated policy about the compilation of data for and the conclusions of the Regional Survey of an Economically Homogeneous Area affecting the tenants' rentals, in particular with respect to exclusion of rental figures from certain communities in the area, the correct square footage used for tenants' quarters, additional charges for quarters' features not otherwise reflected in the survey's figures for comparable rentals, and incorrect deductions for lack of amenities, then the tenants may have no relief based only on the allegation of faults in the survey.

Where the relevant statements of law and policy require an annual adjustment in rentals for Government-furnished quarters according to a Consumer Price Index factor, there is no error when the Government increases rentals based upon that factor.

The deduction from rental for excessive heating costs is not constituted so as to provide a disincentive to conserve utility commodities; any successful conservation effort results in the loss of some portion of the excessive heating costs deduction but it also results in a higher out-of-pocket savings, thus normally creating a net savings.

The deduction from rentals for unusual transportation costs is a creation of law; the Govenment has no authority to set a deduction amount other than that prescribed by the relevant legal authority even though that authority has decreased over the years the amount allowable for the same distance of isolation.

A proper measure of the appropriateness of a rental charge is that it be set so as to create no barrier to the recruitment or retention of employees; nevertheless, that principle is merely a yardstick against which to measure whether the Government in setting rents has adhered to the principle of comparability and, in the absence of proof that such a barrier has been created while rentals otherwise appear to be comparable, appellants may obtain no relief on the mere allegation of the creation of such a barrier.

The Government reaps no "profit," as the authorities understand that term, when it charges a quarters rental which is otherwise comparable to the private housing market.

Appeal of Jan Perschon et al., 5 OHA 65 (Dec. 21, 1982)

RES JUDICATA

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal

RES JUDICATA--Continued

before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

RIGHTS-OF-WAY

(*See also* Indian Lands, Reclamation Lands--if included in this Index.)

GENERALLY

Where a subdivision builder is granted a right-of-way for an access road and bridge pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), with the understanding that a county or town will take over the right-of-way, but an assignment to the county or town has not been approved by BLM, the builder is liable for the rental, and the exemption from payment of rental for a local government under 43 CFR 2803.1-2(c)(1) does not apply.

Carpentry Unlimited, Inc., 62 IBLA 203 (Mar. 9, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

ACT OF FEBRUARY 15, 1901

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 15, 1901--Continued

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Beltro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

ACT OF MARCH 4, 1911

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, *as amended*, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

ACT OF FEBRUARY 25, 1920

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

APPLICATIONS

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

APPRAISALS

An appraisal of a right-of-way for an irrigation ditch, granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

Herring Livestock Co., 69 IBLA 110 (Nov. 30, 1982)

CANCELLATION

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have

RIGHTS-OF-WAY--Continued

CANCELLATION--Continued

acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

CONDITIONS AND LIMITATIONS

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

In granting a right-of-way for a domestic water pipeline pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable. However, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a) where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed.

Jean Mountaingrove, Ruth Mountaingrove, 67 IBLA 154 (Sept. 20, 1982)

FEDERAL HIGHWAY ACT

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Memmott, 61 IBLA 116 (Jan. 6, 1982)

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

An application by a state highway department for a material site right-of-way on public land is properly denied where the applicant fails to demonstrate that the material is reasonably necessary for the construction or maintenance of a highway or where such disposition would not be consistent with other public purposes as determined by the Bureau of Land Management. Where the application is denied on the basis of a determination that it would preempt the public's only available source of cinders within 40 miles and appellant contradicts this by identifying other public sources, the decision rejecting the application will be set aside and the case remanded for further consideration of alternatives that would meet the needs of the applicant without sacrificing other public purposes.

Utah Dept. of Transportation, 62 IBLA 176 (Mar. 8, 1982)

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Nelbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, *as amended*, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

Where rental charges for a reservoir right-of-way are based upon an appraisal report that does not comport with Departmental standards, the decision determining rental charges will be vacated and the case remanded for a new appraisal.

Paradise Oil, Water & Land Development, Inc., 68 IBLA 268 (Nov. 17, 1982)

OIL AND GAS PIPELINES

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, *as amended*, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of these differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

RULES OF PRACTICE

(*See also* Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)

GENERALLY

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Estate of Isidor Deemar, 63 IBLA 217 (Apr. 13, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the case to BLM so that his offer may be considered with priority as of that time.

James M. Chudnow, 68 IBLA 87 (Oct. 22, 1982)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Although the Postal Service is the agent of BLM to deliver written communications to the address of record of an applicant, where the applicant changes his address giving notice only to the Postal Service and not to BLM, the Postal Service then becomes the agent for the applicant who must bear the responsibility and consequence for failure of the Postal Service to properly deliver mail from BLM to the changed address.

RULES OF PRACTICE--Continued

GENERALLY--Continued

where the mail was originally properly dispatched to the address of record of the applicant.

Frank C. Lytle, III, 69 IBLA 210 (Dec. 16, 1982)

APPEALS

Generally

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Kay Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was applied improperly.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Pay, 68 IBLA 26 (Oct. 21, 1982)

Where the assignee, in effect, withdraws his request for approval of an assignment, an appeal filed by the assignor as to the validity of the assignment will be dismissed as moot.

Champlin Petroleum Co., Wayne E. DeFord, 68 IBLA 90 (Oct. 22, 1982)

Answers

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

Burden of Proof

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al   BLA 76 (May 10, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of R. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1340-4-80 (Sept. 9, 1982) 89 I.D. 449

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar. IBCA-1535-11-81 (Sept. 30, 1982)

A claim for the cost of preparing a technical inventory of field tapes and other data furnished by the Government is denied where the appellant alleges that some of the field tapes were missing and some of the data was received in a deplorable condition, but the Board finds that the concurrence of a Government representative in the taking of the inventory did not provide a predicate for the claim asserted where the preparation of the inventory was considered to be simply an exercise of a management prerogative, irrespective of whether such action was to be viewed as a means of facilitating contract performance or satisfying a contract requirement for the furnishing of demultiplexing documentation.

Appeal of Walden General, Inc., IBCA-1475-6-81
(Oct. 19, 1982) 89 I.D. 529

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37
(Oct. 21, 1982) 89 I.D. 538

Dismissal

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co.,
61 IBLA 308 (Feb. 4, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Ray Mallory, 68 IBLA 189 (Nov. 9, 1982)

Harold H. Ruppert, 69 IBLA 82 (Nov. 30, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357
(Apr. 29, 1982)

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126
(June 28, 1982)

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

Utah Wilderness Ass'n, 65 IBLA 219 (July 9, 1982)

The Board of Land Appeals will reverse a determination of the Geological Survey dismissing in part an appeal for failure to file timely an appeal within the time required by 30 CFR Part 290, from a letter denying refunds of alleged royalty overpayments in which no right of appeal was indicated, and which could not fairly be held to have put appellant on notice that a final determination with right of appeal was intended.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1603-7-82 (Nov. 12, 1982) 89 I.D. 583

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal or when he fails to file timely a statement of reasons, and no reason for maintaining the action is apparent.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and no reason for maintaining the appeal is apparent.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

Effect of

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

Under 25 CFR 2.3(b) and 43 CFR 4.21(a), a decision which is subject to review by a higher Departmental official is not effective during the appeal period or during the pendency of an appeal, unless the BIA official to whom an appeal is made, the Board, or the Director of the Office of Hearings and Appeals determines that the public interest requires the decision to be made effective immediately.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

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RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

Extensions of Time

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1603-7-82 (Nov. 12, 1982) 89 I.D. 583

Failure to Appeal

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982) 89 I.D. 208

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Hearings

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on an issue of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Paul B. Teakle, 69 IBLA 54 (Nov. 29, 1982)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

Motions

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982) 89 I.D. 233

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982) 89 I.D. 359

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1603-7-82 (Nov. 12, 1982) 89 I.D. 583

Notice of Appeal

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Reconsideration

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982) 89 I.D. 359

Standing to Appeal

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 18, 1982) 89 I.D. 67

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo B. Baez, 67 IBLA 89 (Sept. 13, 1982)

The provisions of 30 U.S.C. §§ 29 and 30 (1976) relating to "adverse claims" refers only to adverse mineral claims, and nothing in these sections purports to limit the rights of third parties to appeal from a denial of a protest of a patent application where they can show a cognizable interest which has been adversely affected.

Where an individual or organization files a protest to a mineral patent application, which protest is denied, and timely appeals from that denial, such individual or organization is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

Where an individual or organization fails to protest action proposed to be taken by BLM, such an entity has no standing to appeal the denial of a protest filed by some other individual or organization.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

Statement of Reasons

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal or when he fails to file timely a statement of reasons, and no reason for maintaining the action is apparent.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Timely Filing

Where, in a decision published in the *Federal Register* designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co.,
61 IBLA 308 (Feb. 4, 1982)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Ray Mallory, 68 IBLA 189 (Nov. 9, 1982)

Harold H. Ruppert, 69 IBLA 82 (Nov. 30, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

The Board of Land Appeals will reverse a determination of the Geological Survey dismissing in part an appeal for failure to file timely an appeal within the time required by 30 CFR Part 290, from a letter denying refunds of alleged royalty overpayments in which no right of appeal was indicated, and which could not fairly be held to have put appellant on notice that a final determination with right of appeal was intended.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc.,
IBCA-1603-7-82 (Nov. 12, 1982) 89 I.D. 583

EVIDENCE

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Where, in the course of an appeal from the rejection of an oil and gas lease application for other

RULES OF PRACTICE--Continued

EVIDENCE--Continued

reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Doyle, 65 IBLA 340 (July 16, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as a instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

GOVERNMENT CONTESTS

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Evalt, 62 IBLA 116 (Mar. 4, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Robert D. Lara, 67 IBLA 88 (Sept. 9, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

HEARINGS

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

--Continued

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in *Circle L, Inc.*, 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William B. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, *i.e.*, where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Robert E. Lake, 67 IBLA 48 (Sept. 9, 1982)

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982), 89 I.D. 586

RULES OF PRACTICE--Continued

HEARINGS--Continued

Due process does not require notice and a right to be heard in every case where a party may be deprived of property so long as notice and an opportunity to be heard are provided before the action becomes final.

Shell Pipe Line Corp., 69 IBLA 103 (Nov. 30, 1982)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

PRIVATE CONTESTS

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

Where the charges in a private contest complaint against a desert land entry are not corroborated as required by 43 CFR 4.450-4(c), the complaint must be dismissed.

A private contest against a desert land entry that is initiated prior to the expiration of the statutory life of the entry and charges that the entryperson will fail to meet the requirements of the law by the expiration date is premature. Since time remains for the entryperson to fulfill the requirements, it cannot be said with certainty that the contestant has alleged facts which if proved would require cancellation of the entry and thus the contest must be dismissed.

Dale E. Wright v. Jean L. Guiffre, 68 IBLA 279 (Nov. 17, 1982)

Only an individual claiming "an interest in the land" embraced by a patent application has standing to initiate a private contest under 43 CFR 4.450-1. Such an "interest in the land" must be grounded in a specific statutory grant.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

PROTESTS

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where an individual or organization files a protest to a mineral patent application, which protest is denied, and timely appeals from that denial, such individual or organization is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

SECRETARY OF THE INTERIOR

(See also Administrative Authority--if included in this Index.)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

SECRETARY OF THE INTERIOR--Continued

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

SECRETARY OF THE INTERIOR--Continued

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

Ida Lee Anderson, John B. Anderson, 67 IBLA 340 (Oct. 5, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

James B. Chudnow, John L. Messinger, 67 IBLA 360 (Oct. 7, 1982)

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

Ted C. Findeiss, 69 IBLA 34 (Nov. 29, 1982)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

Ted C. Findeiss, 68 IBLA 167 (Oct. 29, 1982)

BLM is without jurisdiction to consider an application for the lease of public land near or adjacent to a hot springs where the land is within a national forest and the Act of Feb. 28, 1899, as amended, 16 U.S.C. § 495 (1976), vests the Secretary of Agriculture with exclusive jurisdiction with respect to the issuance of such leases.

Donn Hopkins, 68 IBLA 184 (Nov. 8, 1982)

SEGREGATION

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a

SEGREGATION--Continued

fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, *as amended*, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the *Federal Register*.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

SEGREGATION--Continued

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

SODIUM LEASES AND PERMITS

(*See also* Mineral Leasing Act--if included in this Index.)

LEASES

Sodium leases, which have a determinate 20-year primary term, are not automatically extended or renewed. The Secretary may renew the lease upon the lessee's timely application for renewal.

The lessee's preference right at the time of renewal under sec. 24 of the Mineral Lands Leasing Act is only to be preferred above other applicants and is not an entitlement, as against the United States, to a renewal lease.

In adjudicating an application for renewal of a sodium lease, the Secretary retains his discretion respecting whether or not to lease. That discretion is limited in that if the decision is made to lease, a preference is extended to the existing lessee who has made timely application.

Existing sodium leases which are beyond their primary term but for which the lessee has made timely application for renewal are continued in force by the provisions of sec. 9 of the Administrative Procedure Act so long as it takes the Department to adjudicate the application.

Sodium Lease Renewals, M-36943 (Mar. 18, 1982)
89 I.D. 173

SPECIAL USE PERMITS

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the

SPECIAL USE PERMITS--Continued

record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

STATE LANDS

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

STATE LAWS

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

STATE SELECTIONS
(*See also* School Lands, Swamplands--if included in this Index.)

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

STATUTES

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale L. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Rooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slinco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Crookes, 62 IBLA 307 (Mar. 18, 1982)

Sidney C. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ebbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Nykola, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Perry Van Hoosen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Barron, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis R. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Robert J. Baby et al., 67 IBLA 370 (Oct. 8, 1982)

Gregory A. Yoetsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1892)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

STATUTES--Continued

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

STATUTORY CONSTRUCTION

GENERALLY

In *Topaz Beryllium Co.* v. *United States*, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

When a statute analogous in text and history to one administered by the Department has been construed by the Supreme Court, but that Court has criticized its own construction even while failing to overrule it, the Department can regard the construction of the statute it administers as a matter not governed by the precedent on the otherwise analogous statute.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

IMPLIED REPEALS

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

LEGISLATIVE HISTORY

The position that only companies actually operating common carrier railroads and their "alter egos" are prohibited from holding federal coal leases by sec. 2(c) of the Mineral Lands Leasing Act and the position that affiliates of such companies are also prohibited are both reasonable, judicially defensible constructions of an ambiguous provision of law. The legislative history of sec. 2(c) fails to answer clearly the question whether affiliates of railroad companies are included in or excluded from the coverage of sec. 2(c).

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

STOCK-RAISING HOMESTEADS

(*See also* Homesteads (Ordinary)--if included in this Index.)

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

SUBMERGED LANDS

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and MTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

ABATEMENT

Generally

Where the record evidence does not support a finding that the recipient of a notice of violation requested an extension of time to abate a violation charged in the notice, prior to OSM's issuance of a cessation order for failure to abate the violation within the time prescribed for abatement, OSM's cessation order is properly upheld against the recipient's claim that conditions at the mine site warranted an extension of the abatement time.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

ADMINISTRATIVE PROCEDURE

Generally

Knowledge possessed by an Administrative Law Judge but not appearing of record in the case before the Board is not a sufficient basis for upholding a decision in a formal proceeding under the Administrative Procedure Act.

Capital Coal Corp., 4 IBSMA 179 (Nov. 23, 1982) 89 I.D. 594

Burden of Proof

In a civil penalty proceeding to review an alleged violation of the requirement of 30 CFR 717.17(a)(1) that drainage be passed through a sedimentation pond, OSM bears the ultimate burden of persuasion as to three basic elements of proof: (1) The existence of surface drainage which came into contact with disturbed area; (2) that this drainage did not pass through a sedimentation pond; and (3) that this drainage flowed off the permit area.

The burden of proving facts and circumstances to support an exemption from regulation by OSM rests with the party claiming the exemption.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982) 89 I.D. 378

A prima facie case is made where sufficient evidence is presented to establish the essential facts. It is evidence that will justify but not compel a finding in favor of the one presenting it, unless it is contradicted and overcome by other evidence. How much evidence is required may vary with the nature of the case and with the relative availability of the evidence to the person charged with the burden of establishing the prima facie case.

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982) 89 I.D. 460

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

ADMINISTRATIVE PROCEDURE--Continued

Burden of Proof--Continued

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982) 89 I.D. 467

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes unrebutted, it also carries its ultimate burden of persuasion.

Tiger Corp., 4 IBSMA 202 (Dec. 17, 1982) 89 I.D. 622

One claiming an exemption from regulation under the Act bears the burden of affirmatively demonstrating entitlement to the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982) 89 I.D. 624

Intervention

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding, denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

Scope of Review

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to decide constitutional issues.

Gobel Hartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

APPEALS

Generally

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

APPLICABILITY

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(1)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

A coal mine operator cannot avoid coverage under the Act by simply contracting to mine two less-than 2-acre sites for different owners, where the sites are adjacent, the operator treats them as related, and where, taken together, they encompass more than 2 acres.

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Bolling Contractors, 4 IBSMA 156 (Sept. 21, 1982)
89 I.D. 475

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, unless it is shown to be maintained with public funds.

Virginia Fuels, Inc., 4 IBSMA 185 (Nov. 30, 1982)
89 I.D. 604

An access and/or haul road is subject to regulation as part of a surface coal mining operation in the absence of an affirmative demonstration that the road is maintained with public funds.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

Postmining Land Use

The extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the performance requirements of the initial regulatory program.

Gobel Bartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

CIVIL PENALTIES

Amount

Under 30 CFR 723.15(b), OSM is required to assess a civil penalty of not less than $750 per day for each day during which a cessation order properly remains outstanding, up to a limit of 30 days.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

Hearings Procedure

The provision of 30 CFR 723.17(b), that OSM shall serve notice of a civil penalty assessment within 30 days of the issuance of the underlying enforcement document, is directory, not mandatory; and OSM's failure to comply with this provision is not a bar to an assessment in the absence of a showing of prejudice resulting from the noncompliance.

Where OSM erroneously includes a violation that has previously been vacated in assessing and pleading the amount of a civil penalty prior to the hearing in a review proceeding, but then discovers its error and substitutes a different violation in its point computation at the time of the hearing, such substitution is proper under 43 CFR 4.1157(b)(1) unless the petitioner can demonstrate prejudice.

Sahara Coal Co., Inc., 4 IBSMA 166 (Oct. 12, 1982)
89 I.D. 505

EVIDENCE

Generally

An alleged violation of the effluent limitation for iron set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing total iron in discharges from a sedimentation pond to be in excess of 10 milligrams per liter, in the absence of evidence that the Hach test was not properly administered.

D & D Mining Co., 4 IBSMA 113 (Aug. 24, 1982)
89 I.D. 409

A prima facie case is made where sufficient evidence is presented to establish the essential facts. It is evidence that will justify but not compel a finding in favor of the one presenting it, unless it is contradicted and overcome by other evidence. How much evidence is required may vary with the nature of the case and with the relative availability of the evidence to the person charged with the burden of establishing the prima facie case.

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982)
89 I.D. 460

In a proceeding to review an alleged violation of the effluent limitations for iron and pH expressed in 30 CFR 715.17(a), OSM met its burden of establishing a prima facie case by its evidence that tests of water samples taken at the point of discharge of drainage from the sedimentation pond which received surface drainage from the areas disturbed by the surface coal mining and reclamation operations showed iron and pH levels outside the applicable limits.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

HEARINGS

Generally

Knowledge possessed by an Administrative Law Judge but not appearing of record in the case before the Board is not a sufficient basis for upholding a decision in a formal proceeding under the Administrative Procedure Act.

Capital Coal Corp., 4 IBSMA 179 (Nov. 23, 1982)
89 I.D. 594

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes unrebutted, it also carries its ultimate burden of persuasion.

Tiger Corp., 4 IBSMA 202 (Dec. 17, 1982) 89 I.D. 622

HYDROLOGIC SYSTEM PROTECTION

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

The requirement of 30 CFR 717.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventative measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

Under 30 CFR 717.17(a) the regulatory authority may grant exemptions from the requirement that drainage from disturbed area be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

HYDROLOGIC SYSTEM PROTECTION--Continued

Generally--Continued

The sedimentation pond requirement of 30 CFR 717.17(a) is a preventive measure; thus, proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the requirement.

The elements of proof of a violation of the sedimentation pond requirement are: (1) the existence of surface drainage from areas disturbed in the course of mining and reclamation operations; (2) that such drainage was not passed through a sedimentation pond; and (3) that the drainage left the permit area.

An operator of an underground coal mine must undertake practices to control and minimize water pollution which include, but are not limited to, preventing water contact with acid- or toxic-forming materials and minimizing water contact time with waste materials.

An alleged violation of the effluent limitations prescribed in 30 CFR 717.17(a) cannot be upheld where the evidence shows that the drainage identified in the notice of violation neither originated in an area disturbed by the surface coal mining and reclamation operations nor became commingled with drainage from that disturbed area.

The effluent limitations prescribed in 30 CFR 717.17(a) apply to all discharges that include drainage from areas disturbed by surface coal mining and reclamation operations.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

INITIAL REGULATORY PROGRAM

Generally

"Permittee." For purposes of the initial regulatory program, one who conducts a surface coal mining operation is a "permittee," whether or not required to hold a permit under state law, and is responsible for compliance with performance standards applicable to the operation.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

Under 30 CFR 710.11(2)(i) of the initial regulatory program, a person conducting coal mining operations must obtain a permit if a permit is required by the State in which the mining occurs.

The extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the performance requirements of the initial regulatory program.

Gobel Hartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

NOTICES OF VIOLATION

Generally

Where OSM erroneously includes a violation that has previously been vacated in assessing and pleading the amount of a civil penalty prior to the hearing in a review proceeding, but then discovers its error and substitutes a different violation in its point computation at the time of the hearing, such substitution is

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

proper under 43 CFR 4.1157(b)(1) unless the petitioner can demonstrate prejudice.

Sahara Coal Co., Inc., 4 IBSMA 166 (Oct. 12, 1982) 89 I.D. 505

REVEGETATION

Generally

A violation of 30 CFR 715.20(c) is proven when it is demonstrated that an operator's initial revegetation efforts did not prevent serious erosion and that the operator failed to take such additional timely measures as were necessary to control erosion.

Sahara Coal Co., Inc., 4 IBSMA 166 (Oct. 12, 1982) 89 I.D. 505

ROADS

Generally

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Petterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

The exemption from regulation provided by the exclusionary language in the definition of "roads" in 30 CFR 710.5 is for the benefit of governmental entities.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D. 313

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, unless it is shown to be maintained with public funds.

Virginia Fuels, Inc., 4 IBSMA 185 (Nov. 30, 1982) 89 I.D. 604

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

ROADS--Continued

Generally--Continued

An access and/or haul road is subject to regulation as part of a surface coal mining operation in the absence of an affirmative demonstration that the road is maintained with public funds.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982) 89 I.D. 624

STEEP-SLOPE MINING

Generally

The special performance standards set forth in 30 CFR 716.2 do not pertain to a mining operation subject to regulation as a mountaintop removal operation in accordance with the provisions of 30 CFR 716.3.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D. 313

SUSPENSION OR REVOCATION OF PERMITS

Generally

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding, denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982) 89 I.D. 113

VARIANCES AND EXEMPTIONS

Generally

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

VARIANCES AND EXEMPTIONS--Continued

Generally--Continued

Entitlement to an exemption from regulation must be asserted and proven by the one claiming the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

The burden of proving facts and circumstances to support an exemption from regulation by OSM rests with the party claiming the exemption.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

One claiming an exemption from regulation under the Act bears the burden of affirmatively demonstrating entitlement to the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

2-Acre

The area of an access and haul road used by more than one coal mine operator is properly attributed, at least in part, to each operator in calculating the extent of the surface area affected by that operator for the purpose of determining whether the operator qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982)
89 I.D. 460

Virginia Fuels, Inc., 4 IBSMA 185 (Nov. 30, 1982)
89 I.D. 604

A coal mine operator cannot avoid coverage under the Act by simply contracting to mine two less-than 2-acre sites for different owners, where the sites are adjacent, the operator treats them as related, and where, taken together, they encompass more than 2 acres.

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Rolling Contractors, 4 IBSMA 156 (Sept. 21, 1982)
89 I.D. 475

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

VARIANCES AND EXEMPTIONS--Continued

2-Acre--Continued

The area of an access and haul road used by a coal mine operator is properly included, at least in part, in the surface area affected by the operation for the purpose of determining whether the operation qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Gobel Bartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Generally

An alleged violation of the effluent limitation for iron set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing total iron in discharges from a sedimentation pond to be in excess of 10 milligrams per liter, in the absence of evidence that the Hach test was not properly administered.

D & D Mining Co., 4 IBSMA 113 (Aug. 24, 1982)
89 I.D. 409

In a proceeding to review an alleged violation of the effluent limitations for iron and pH expressed in 30 CFR 715.17(a), OSM met its burden of establishing a prima facie case by its evidence that tests of water samples taken at the point of discharge of drainage from the sedimentation pond which received surface drainage from the areas disturbed by the surface coal mining and reclamation operations showed iron and pH levels outside the applicable limits.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

Acid and Toxic Materials

An operator of an underground coal mine must undertake practices to control and minimize water pollution which include, but are not limited to, preventing water contact with acid- or toxic-forming materials and minimizing water contact time with waste materials.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

Discharges from Disturbed Areas

The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations.

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Discharges from Disturbed Areas--Continued

An alleged violation of the effluent limitations prescribed in 30 CFR 717.17(a) cannot be upheld where the evidence shows that the drainage identified in the notice of violation neither originated in an area disturbed by the surface coal mining and reclamation operations nor became commingled with drainage from that disturbed area.

The effluent limitations prescribed in 30 CFR 717.17(a) apply to all discharges that include drainage from areas disturbed by surface coal mining and reclamation operations.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

Disturbed Areas

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

Sedimentation Ponds

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

The requirement of 30 CFR 717.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventative measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

In a civil penalty proceeding to review an alleged violation of the requirement of 30 CFR 717.17(a)(1) that drainage be passed through a sedimentation pond, OSM bears the ultimate burden of persuasion as to three basic elements of proof: (1) The existence of surface drainage which came into contact with disturbed area; (2) that this drainage did not pass through a sedimentation pond; and (3) that this drainage flowed off the permit area.

Under 30 CFR 717.17(a) the regulatory authority may grant exemptions from the requirement that drainage from disturbed area be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Sedimentation Ponds--Continued

The sedimentation pond requirement of 30 CFR 717.17(a) is a preventive measure; thus, proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the requirement.

The elements of proof of a violation of the sedimentation pond requirement are: (1) the existence of surface drainage from areas disturbed in the course of mining and reclamation operations; (2) that such drainage was not passed through a sedimentation pond; and (3) that the drainage left the permit area.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

WORDS AND PHRASES

"*Disturbed area*." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

"*Permittee*." For purposes of the initial regulatory program, one who conducts a surface coal mining operation is a "permittee," whether or not required to hold a permit under state law, and is responsible for compliance with performance standards applicable to the operation.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

"*Roads maintained with public funds*." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

"*Surface coal mining operations*." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982)
89 I.D. 113

SURVEYS OF PUBLIC LANDS

(*See also* Boundaries, Public Lands--if included in this Index.)

GENERALLY

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

because no change has been made in the land actually covered by the lease.

Max A. Krey et al., 65 IBLA 192 (June 29, 1982)

TAR SANDS

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James B. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be

TAR SANDS--Continued

leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

TAYLOR GRAZING ACT

(See also Grazing Leases, Grazing Permits & Licenses--if included in this Index.)

GENERALLY

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

TIMBER SALES AND DISPOSALS

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

Diana Coogle et al., 61 IBLA 393 (Feb. 19, 1982)

A.C.O.T.S., 61 IBLA 396 (Feb. 22, 1982)

A.C.O.T.S., 62 IBLA 43 (Feb. 24, 1982)

Alan Winter et al., 62 IBLA 299 (Mar. 18, 1982)

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Robert H. Barker, 62 IBLA 331 (Mar. 23, 1982)

BLM may properly deny a request for an extension of time for a timber sale contract where the purchaser asserts that the delay in cutting and removal was due to market fluctuations. However, where the Secretary has waived the regulations dealing with the term of timber sale contracts and extensions of time, thereby permitting uncompleted contracts to remain in effect past their expiration dates, an affected purchaser will be afforded a grace period on his right to cut and remove timber.

Robin Lumber Co., 66 IBLA 88 (July 29, 1982)

Where an appeal of a Bureau of Land Management ction regarding the triggering of a small business et-aside timber sale program raises only class size ssues, the appeal must be dismissed because the Small usiness Administration, not the Department of the nterior, determines class size.

ublic Timber Purchasers Group, 66 IBLA 244 (Aug. 17, 982)

TOWNSITES

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kesrcs et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie H. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

TRESPASS

GENERALLY

A notice to cease trespass and an order to remove improvements from public lands may properly issue where appellant has been occupying public lands without authorization or claim or color of title.

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

(*See also* Appeals--if included in this Index.)

ADMINISTRATIVE REVIEW AND APPEALS

The price for which real property is acquired and the right, if any, of the grantor of such property to salvage of real property improvements on the land are matters determinable by agreement between the owners of the property and the acquiring agency, or by condemnation proceedings, and they are not reviewable upon appeal to this Office.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY

Expenses Incidental to Transfer of Title to the United States

Expenses incidental to transfer of title to the United States, reimbursable under § 303 of the Act and implementing regulations, do not include costs incurred by the grantors of the acquired property for title investigation work to satisfy objections to the title and hasten issuance of title insurance to the United States.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John R. Larsen & Mr. and Mrs. Louis P. Larsen, 4 OHA 272 (Apr. 16, 1982)

Expenses incidental to transfer of title to the United States, reimbursable under § 303(1) of the Act and implementing regulations, do not include appraisal fees, attorney's fees and miscellaneous personal expense items such as telephone costs, stationery, postage, etc.

Uniform Relocation Assistance Appeal of Mr. Kenneth J. Kubat, Executor of the Estate of William Kubat (Deceased), 5 OHA 58 (Nov. 9, 1982)

UNIFORM RELOCATION ASSISTANCE

Generally

Where the claim for additional moving and related costs was filed after the time limitation prescribed by Departmental regulations implementing the Relocation Act, and the record as a whole does not justify an extension of time for filing an additional claim, the claim is properly denied.

Uniform Relocation Assistance Appeal of E. Ray Sinclair, 4 OHA 216 (Jan. 4, 1982)

Where judgment required the claimant to remove certain fixtures to the real property, to which claimant had retained removal rights, and claimant failed to remove such property within the required time, such removal rights are properly treated as abandoned and the property remains in the United States.

Uniform Relocation Assistance Appeal of D. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where claimant began occupancy of the acquired property after the acquisition by the Government had been completed, his subsequent move from the property is not as a result of the acquisition by the Government; hence claimant is not a displaced person, and is not eligible for benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and R. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Moving and Related Expenses

Generally

Reimbursement is not allowable for costs of moving structures or other improvements in which the displaced person reserved ownership rights.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Where claim includes request for payment of moving expense that is not adequately substantiated by supporting data, the acquiring agency requests additional supporting data, and such additional data are not supplied within a reasonable time, the claim for such expenses is properly denied.

Uniform Relocation Assistance Appeal of D. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where the record on appeal establishes that claimant failed to remove signboards from property acquired by the Park Service after several notices, and Park Service thereafter properly removed signs as abandoned property, payment of benefits in an amount equal to the actual reasonable expense required to relocate such signs was proper under sec. 202 of the Act and implementing Departmental regulations.

Uniform Relocation Assistance Appeal of Rich Outdoor Advertising Co., 4 OHA 234 (Feb. 5, 1982)

Where claimant has not established his claim with sufficient evidence, and where decision of the Bureau official below is supported by the record, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and R. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Where the record evidence shows the claimant has not established his entitlement to payment for reasonable moving and related expenses in an amount greater than that authorized by the Fish and Wildlife Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Richard R. Catto, 4 OHA 278 (June 1, 1982)

Where the cost of moving a low-value, high-bulk item of personal property would not be disproportionate to its value, the agency shall make payment to the displaced person for the actual direct losses of that property as a result of discontinuing a business operation, but the payment shall not exceed the reasonable expenses that would have been required to relocate the property, in accordance with 41 CFR 114-50.601(b).

Uniform Relocation Assistance Appeal of Mr. and Mrs. Forrest L. Harmon, 5 OHA 9 (Aug. 11, 1982)

Costs of a survey of boundary lines of a replacement business property are not reimbursable as moving and related expenses under § 202 of the Act.

Expenses for temporary storage of some law books will be reimbursed to the extent such are shown by the record on appeal to be reasonable and necessary expenses in connection with the relocation of a law office.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Expenses claimed for loss of some secretarial services during the period of the move of a law office are nonallowable on the basis that the Act and the Department's implementing regulations do not provide for such payment.

Where the contract for moving a law office failed to specify requirements for reshelving of books and closed files in the library at the replacement site and the displacee was obliged to organize and reshelve the books and closed files himself, he may be reimbursed for reasonable additional moving costs.

Claimed losses of income resulting from errors and omissions in the telephone directory are not compensable as moving and related expenses under the Act and the implementing regulations.

Reimbursement claimed for the cost of a used window air-conditioner and for expenses incurred for cleaning, painting and installing it in the replacement property, are costs for an improvement to the replacement property and as such they are not allowable under regulations of the Department implementing the Act.

Expenses for purchase and installation of new carpeting in the replacement property, for replacing sidewalk and steps in front of that property, and for off-street parking while parking area was under construction on the replacement property, are expenses for and in connection with improvements to the relocation property and are not reimbursable under the Act and the implementing regulations as moving and related costs.

Trash hauling costs are not reimbursable for hauling items out of the relocation site to make the site ready for occupancy; nor are additional costs allowable for hauling items out of the Government-acquired site where the contract with the movers already provided for such trash removal services.

Uniform Relocation Assistance Appeal of Mr. Nelson Horvath, 5 OHA 40 (Oct. 22, 1982)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

A claim for a fixed payment under § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, is properly disallowed where the claimant fails to establish that the business cannot be relocated without a substantial loss of its existing patronage.

Uniform Relocation Assistance Appeal of John P. Friel, Esq., 4 OHA 244 (Mar. 8, 1982)

Replacement Housing Payment for Homeowners

Generally

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits an adjusted price rather than the list price of the dwelling found by the Park Service to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James D. Cahill, 4 OHA 229 (Jan. 29, 1982)

Where the record shows the claimants have received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act and the Department's implementing regulations, the determination appealed from will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Dan J. Biro, 4 OHA 240 (Feb. 16, 1982)

A determination disallowing a claim for replacement housing differential costs under sec. 203(a)(1)(A) of the Act will be affirmed where the evidence shows a comparable replacement dwelling which was decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, could have been purchased at the time of the claimants' displacement for less than the purchase price of the Government-acquired dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

Where substantial evidence of record supports a conclusion that a displaced person claiming homeowner's replacement housing payment benefits under § 203 of the Act is entitled instead to replacement housing benefits under § 204 of the Act, as a displaced tenant, the case will be remanded for a determination of the benefits allowable to the claimant under § 204 of the Act.

Uniform Relocation Assistance Appeal of Mrs. Mildred F. Knox, 5 OHA 60 (Dec. 6, 1982)

Waiver of Benefits

A claim for replacement housing benefits is properly disallowed where the claimant sold the property to the Government, reserving a right of use and occupancy of the dwelling thereon for a term of years, and before the expiration of the reserved term of use and occupancy and the claimant's move from the property, the Congress eliminated replacement housing supplement benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Mr. Paul F. Barney, 5 OHA 53 (Nov. 9, 1982)

WILD AND SCENIC RIVERS ACT

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it

WILD AND SCENIC RIVERS ACT--Continued

maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

WILD FREE-ROAMING HORSES AND BURROS ACT

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

WILDERNESS ACT

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

WILDERNESS ACT--Continued

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petrolane, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

WILDERNESS ACT--Continued

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, *inter alia*, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

WILDERNESS ACT--Continued

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter E. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Yolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319
(Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85
(Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, *i.e.*, rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

R. L. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find seclusion.

Gilbert W. Baily, 65 IBLA 223 (July 9, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Tom E. Ford, 66 IBLA 14 (July 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Where the record evinces BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

BLM's practice of examining the mineral potential in the study phase of the wilderness review process, rather than the inventory phase, does not violate sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

City of Delta, 66 IBLA 282 (Aug. 19, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sierra Club et al., 66 IBLA 300 (Aug. 20, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

National Public Lands Task Force et al., 66 IBLA 340 (Aug. 26, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires, *inter alia*, that an area designated for wilderness preservation *generally* appear to have been affected *primarily* by the forces of nature with the imprint of man's work *substantially* unnoticeable. The underscored language, taken verbatim from the statute, is ample support for the proposition that a wilderness study area (WSA) need not be free of all intrusions.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Ken Brower. 67 IBLA 124 (Sept. 16, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

Charles Schwenke. 67 IBLA 201 (Sept. 22, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Charles H. Hauptman. 67 IBLA 207 (Sept. 22, 1982)

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness, opportunities for solitude, or opportunities for primitive and unconfined recreation, are entitled to considerable deference.

An appellant seeking reversal of a decision to include land in a wilderness study area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

Colorado River Water Conservation District. 67 IBLA 287 (Sept. 28, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Mitchell Energy Corp., Texas Gas Exploration Corp., 68 IBLA 219 (Nov. 12, 1982)

A decision to establish a wilderness study area pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, is proper absent a showing of compelling reasons requiring modification or reversal. Arguments that the area is affected by outside industrial and commercial activity do not preclude further study of the area's fitness for wilderness classification in the absence of proof that the intrusions by man are so great as to prevent the possibility of wilderness classification.

Arguments which question the ultimate best use of a proposed wilderness study area for wilderness purposes are prematurely raised at the intensive inventory stage of agency review.

Public Service Co. of Colorado, Koch Industries, Inc., 68 IBLA 262 (Nov. 17, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed where appellant fails to point out specific errors of law or fact in the decision below--more than mere disagreement with the conclusion of BLM is required to reverse a decision or place a factual matter at issue.

Kenneth E. Barr, Doris B. Barr. 69 IBLA 182 (Dec. 15, 1982)

WILDLIFE REFUGES AND PROJECTS

(*See also* Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)

GENERALLY

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

LEASES AND PERMITS

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 380 (Oct. 8, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(g) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

James C. Robinson et al., 68 IBLA 84 (Oct. 21, 1982)

Mining claims are properly declared null and void ab initio when they are located on land which, on the date of location, was included in an application for withdrawal from appropriation under the public land laws, including the mining laws and the mineral leasing laws.

Louise Woodall, 69 IBLA 108 (Nov. 30, 1982)

EFFECT OF

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert R. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

George H. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

Gary E. Carter, 65 IBLA 338 (July 15, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

J & B Mining Co., Inc., 69 IBLA 73 (Nov. 30, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Ronald W. Ramm, 67 IBLA 32 (Sept. 7, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(g) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

James C. Robinson et al., 68 IBLA 84 (Oct. 21, 1982)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Lester E. Holt, 69 IBLA 180 (Dec. 15, 1982)

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. Where oil and gas lease offers embrace lands withdrawn or reserved for an agency of the Department of Defense, the lands may only be leased after consultation with the Department of Defense.

Douglas E. Smith, 69 IBLA 343 (Dec. 28, 1982)

POWERSITES

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, *as amended*, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, *as amended*.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976) did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

RECLAMATION WITHDRAWALS

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Elmer G. Thomas et al., 66 IBLA 92 (July 30, 1982)

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Where the Secretary has not expressly made revocation of a withdrawal retroactive, the Board of Land Appeals lacks authority to give the revocation retroactive effect.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Donald W. Bass, 67 IBLA 32 (Sept. 7, 1982)

WORDS AND PHRASES

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

"Date of location." Although 43 CFR 3833.0-5(b) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

WORDS AND PHRASES--Continued

"*Date of location*." Under Colorado State law, as applied by 43 CFR 3833.0-5(h), the date of location of an unpatented mining claim in Colorado is the date specified in the location certificate. Where the claimant fails to file a copy of the official record of the notice of location of this claim with BLM within 90 days of this date, BLM properly rejects the filing, notwithstanding allegations that the actual date of location was different than the date specified in the location certificate.

Amigo Mining, Inc., 68 IBLA 305 (Nov. 19, 1982)

"*Good faith*." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willmorth, 64 IBLA 159 (May 25, 1982)

"*Leasing*." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

"*Notation rule*." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

"*Oil shale*." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982)
89 I.D. 538

"*Paying quantities*." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982)
89 I.D. 480

WORDS AND PHRASES--Continued

"*Pending*." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

"*Public lands*." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

"*Public lands*." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

"*Public lands*." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

"*Roadless*." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

Gilbert W. Baily, 65 IBLA 223 (July 9, 1982)

Tom E. Ford, 66 IBLA 14 (July 23, 1982)

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

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Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

Ken Brower, 67 IBLA 124 (Sept. 16, 1982)

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

Charles H. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

"*Smallest legal subdivision*." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, *i.e.*, a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)